

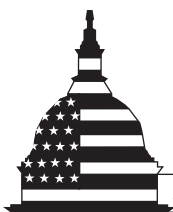
GAO

Report to the Committee on Homeland
Security and Governmental Affairs,
U.S. Senate

April 2011

OVERSTAY ENFORCEMENT

Additional
Mechanisms for
Collecting, Assessing,
and Sharing Data
Could Strengthen
DHS's Efforts but
Would Have Costs



G A O

Accountability * Integrity * Reliability

Highlights of [GAO-11-411](#), a report to the Committee on Homeland Security and Governmental Affairs, U.S. Senate

Why GAO Did This Study

According to Pew Hispanic Center estimates, approximately 4 million to 5.5 million unauthorized immigrants in the United States entered the country legally on a temporary basis but then overstayed their authorized periods of admission—referred to as overstays. As requested, GAO examined the extent to which the Department of Homeland Security (DHS) (1) takes action to address overstays and its reported results; and (2) identifies overstays and shares this information among its border security and immigration enforcement components. GAO reviewed relevant documents, such as standard operating procedures, DHS guidance, and overstay investigations data from fiscal years 2006 through 2010; interviewed officials from DHS components; and visited 6 DHS field offices and 12 ports of entry based on geographic dispersion, among other factors. The results of these visits are not generalizable, but provided insights into DHS operations.

What GAO Recommends

GAO recommends, among other things, that DHS establish a time frame for completing overstay enforcement planning, performance measurement mechanisms, and, if benefits outweigh costs, a mechanism for collecting departure forms at land borders and alerts for additional categories of overstays. DHS concurred with our recommendations.

View [GAO-11-411](#) or key components. For more information, contact Richard Stana at (202) 512-8777 or stanar@gao.gov.

April 2011

OVERSTAY ENFORCEMENT

Additional Mechanisms for Collecting, Assessing, and Sharing Data Could Strengthen DHS's Efforts but Would Have Costs

What GAO Found

DHS takes actions to address a small portion of the estimated overstay population due to, among other things, competing priorities; however, these efforts could be enhanced by improved planning and performance management. Since fiscal year 2006, U.S. Immigration and Customs Enforcement (ICE), the principle DHS component responsible for overstay enforcement, has allocated about 3 percent of its investigative work hours to overstay investigations and its Counterterrorism and Criminal Exploitation Unit (CTCEU), which prioritizes and investigates possible overstays, has arrested approximately 8,100 overstays. ICE is considering assigning some responsibility for noncriminal overstay enforcement to its Enforcement and Removal Operations (ERO) directorate, which has responsibility for apprehending and removing illegal aliens from the United States. However, ERO does not plan to assume this responsibility until ICE assesses the funding and resources doing so would require. ICE has not established a time frame for completing this assessment. By developing such a time frame and utilizing the assessment findings, as appropriate, ICE could strengthen its planning efforts and be better positioned to hold staff accountable for completing the assessment. In addition, CTCEU does not have mechanisms to assess program performance in accordance with leading performance management practices. By establishing such mechanisms, CTCEU could better ensure that managers have information to assist in making decisions for strengthening overstay enforcement efforts and assessing performance against CTCEU's goals.

In the absence of a biometric entry and exit system, DHS uses various methods for identifying overstays, primarily biographic data, and sharing of overstay information; however, DHS faces challenges in collecting departure data and does not share information about all categories of suspected overstays among its components. For example, U.S. Customs and Border Protection (CBP), the DHS component charged with inspecting all people who enter the United States, does not provide a standard mechanism for nonimmigrants departing the United States through land ports of entry to remit their arrival and departure forms. These forms contain information, such as arrival and departure dates, used by DHS to identify overstays. CBP officials stated that establishing such a mechanism could help the agency increase its collection of departure data, but could also result in costs related to, for example, physical modifications to land ports of entry. If the benefits outweigh the costs, such a mechanism could help DHS obtain more complete and reliable departure data for identifying overstays. DHS also shares overstay information among its components through various mechanisms. For example, DHS creates electronic alerts for certain categories of overstays, such as those who overstay by more than 90 days, but does not create alerts for those who overstay by less than 90 days to focus efforts on more egregious overstay violators, as identified by CBP. Expanding the categories of overstays assigned an alert to the extent that benefits outweigh costs could improve the chance that these individuals are identified as overstays during subsequent encounters with federal officials, such as when they apply for readmission to the United States.

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Abbreviations

CBP	U.S. Customs and Border Protection
CTCEU	Counterterrorism and Criminal Exploitation Unit
DHS	Department of Homeland Security
ERO	Enforcement and Removal Operations
ICE	U.S. Immigration and Customs Enforcement
POE	port of entry
USCIS	U.S. Citizenship and Immigration Services
US-VISIT	U.S. Visitor and Immigrant Status Indicator Technology
VWP	Visa Waiver Program

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United States Government Accountability Office
Washington, DC 20548

April 15, 2011

The Honorable Joseph Lieberman
Chairman
The Honorable Susan Collins
Ranking Member
Committee on Homeland Security and Governmental Affairs
United States Senate

The most recent estimates from the Pew Hispanic Center approximated that, in 2006, out of an unauthorized resident alien population of 11.5 million to 12 million in the United States, about 4 million to 5.5 million were overstays.¹ These are individuals who were admitted to the country legally on a temporary basis—either with a visa, or in some cases, as a visitor who was allowed to enter without a visa—but then overstayed their authorized periods of admission.² The overstay population is comprised of individuals from various global regions, including Europe, South America, Asia, and the Middle East. In February 2008, we reported that most overstays are likely motivated by economic opportunities to stay in the United States beyond their authorized periods of admission.³ Individuals overstaying their authorized periods of admission could pose homeland security concerns. For example, in some instances overstays have been identified as terrorists or involved in terrorist-related activity, such as 5 of

¹Pew Hispanic Center, *Modes of Entry for the Unauthorized Migrant Population* (Washington, D.C.: May 22, 2006).

²Visitors who are allowed to seek admission without a visa include citizens of Canada and the British Overseas Territory of Bermuda (and certain residents of other adjacent islands, such as the Bahamas) under certain circumstances, as well as Visa Waiver Program participants. This program allows nationals from certain countries to apply for admission to the United States as temporary visitors for business or pleasure without first obtaining a visa from a U.S. consulate abroad. In order to qualify for the Visa Waiver Program, a country must meet various requirements, such as entering into agreement with the United States to report lost or stolen passports within a strict time limit and in a manner specified in the agreement. Currently, 36 countries participate in the Visa Waiver Program: Andorra, Australia, Austria, Belgium, Brunei, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, the Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovakia, Slovenia, South Korea, Spain, Sweden, Switzerland, and the United Kingdom. We will be reporting on the status of the Visa Waiver Program later this year.

³GAO, *Visa Waiver Program: Limitations with Department of Homeland Security's Plan to Verify Departure of Foreign Nationals*, [GAO-08-458T](#) (Washington, D.C.: Feb. 28, 2008).

the 19 September 11, 2001, hijackers.⁴ In addition, according to Department of Homeland Security (DHS) data, of approximately 400 individuals reported by the Department of Justice as convicted in the United States as a result of international terrorism-related investigations conducted from September 2001 through March 2010, approximately 36 were overstays.⁵

DHS has primary responsibility for identifying and taking enforcement action to address overstays, and several of its components and programs contribute to these efforts. U.S. Customs and Border Protection (CBP) is tasked with, among other duties, inspecting all people applying for entry to the United States to determine their admissibility to the country and screening Visa Waiver Program (VWP) applicants to determine their eligibility to travel to the United States under the program. U.S. Immigration and Customs Enforcement (ICE) is the lead agency for enforcing immigration law in the interior of the United States and is primarily responsible for overstay enforcement. The United States Visitor and Immigrant Status Indicator Technology Program (US-VISIT) within DHS's National Protection and Programs Directorate supports the identification of nonimmigrant overstays. U.S. Citizenship and Immigration Services (USCIS) is responsible for adjudicating applications and petitions for immigration and citizenship benefits and the Office of Policy Development is responsible for policy and oversight of the VWP. In addition, the Department of State is responsible for issuing visas to foreign nationals seeking admission to the United States.

In light of the potential homeland security risk posed by overstays, you asked us to review DHS efforts to identify, address, and share information on overstays. This report addresses the following questions:

- To what extent do federal agencies take action against overstays, and what have been the reported results?
- To what extent does DHS identify and share information on overstays among its components and with federal, state, and local agencies?

⁴In this report we include out of status students—student visa holders who fail to meet certain requirements, such as enrolling in a qualified education program—in our definition of overstays.

⁵For more information on these convictions, see Department of Justice, *National Security Division Statistics on Unsealed International Terrorism and Terrorism-Related Convictions* (Washington, D.C.: March 2010).

To determine the extent to which federal agencies take action against overstays, we analyzed ICE documentation, such as policy manuals, regarding its processes for identifying and investigating possible overstays located within the United States. We obtained and analyzed data from ICE on the investigations of its Counterterrorism and Criminal Exploitation Unit (CTCEU), which is primarily responsible for overstay investigations, from fiscal years 2004 through 2010 and ICE's overstay investigative work hours from fiscal years 2006 through 2010 to determine the extent to which ICE has dedicated investigative resources to overstay investigations.⁶ To assess the reliability of these data, we reviewed documentation on ICE's data system internal controls and interviewed knowledgeable agency officials about the source of the data and the quality assurance steps performed to help ensure data reliability. We determined that the data were sufficiently reliable for the purposes of our report. To evaluate ICE's overstay enforcement efforts, we assessed the extent to which CTCEU's program practices adhered to standard practices for program management and internal control standards.⁷ Furthermore, we interviewed ICE officials from CTCEU and Enforcement and Removal Operations (ERO) headquarters, and conducted site visits to 6 of ICE's 26 Special Agent in Charge field office locations—Seattle, Wash.; Los Angeles and San Diego, Calif.; Miami, Fla.; New York, N.Y.; and Newark, N.J. We selected these locations based on a mix of criteria, including the number of completed overstays investigations, geographic location, and locations near CBP ports of entry (POE).⁸ Although the results from our interviews with officials at these locations cannot be generalized to officials at all field offices, the site visits provided us with useful insights into the experiences of ICE officials responsible for investigating overstays, including their views on the processes ICE has established for conducting these investigations. In addition, we obtained data and interviewed officials from CBP and the State Department regarding their actions against overstays attempting to obtain a new visa or gain admission to the

⁶We analyzed the results of CTCEU overstay investigations starting in fiscal year 2004 because CTCEU, formerly called the Compliance Enforcement Unit, was established by ICE in 2003 and fiscal year 2004 is the first year for which complete data are available. We obtained data on ICE's overstay investigative work hours from fiscal years 2006 through 2010 in order to focus our analysis on a 5-year period.

⁷See, for example, GAO, *Standards for Internal Control in the Federal Government*, GAO/AIMD-00-21.3.1 (Washington, D.C.: Nov. 1, 1999); and the Project Management Institute's *The Standard for Program Management* © (2006).

⁸A POE is a location by which individuals and merchandise may seek legal entry into the United States. There are 327 air, sea, and land POEs in the United States.

United States after having previously overstayed. In particular, we analyzed data from CBP on the number of overstays it determined to be inadmissible from fiscal years 2005 through 2010, and from the State Department on the number of visas it refused due to prior overstay violations from fiscal years 2005 through 2010.⁹ We assessed the reliability of these data by interviewing officials familiar with the processes used to collect, record, and analyze the data, and determined that the data were sufficiently reliable for the purposes of our report.

To determine the extent to which DHS identifies and shares information on overstays, we analyzed the processes DHS and its components, particularly CTCEU and US-VISIT, use to evaluate suspected overstay records and collect nonimmigrant arrival and departure information. We compared DHS processes to internal control standards; analyzed US-VISIT and CTCEU program documentation, such as guidance for evaluating overstay records; and analyzed data on the number of overstay leads identified and reviewed by US-VISIT from fiscal years 2005 through 2010 and by CTCEU from fiscal years 2004 through 2010.¹⁰ We assessed the reliability of these data by interviewing US-VISIT and CTCEU officials who were familiar with the data systems and by reviewing program documentation and data systems' internal control procedures, and we determined that these data were sufficiently reliable for the purposes of our report. Further, we interviewed officials from US-VISIT, CTCEU, and the DHS Office of Immigration Statistics about the processes and systems used to analyze arrival and departure information and other immigration records for the purpose of identifying overstays. We also interviewed officials at CBP Office of Field Operations headquarters and conducted site visits to three land POEs, four sea POEs, and five air POEs to observe and obtain officials' views on the processes and systems used by CBP to inspect passengers and collect nonimmigrant arrival and departure information. We selected the POEs to visit based on their geographic proximity to other types of POEs (i.e., land, sea, or air) and to include POEs dispersed throughout the country, as well as their proximity to ICE field offices we visited. Although we cannot generalize the information obtained during the site visits to the experience of CBP officials at all

⁹We analyzed CBP and State Department data from fiscal years 2005 through 2010 because fiscal year 2005 is the first year for which complete CBP data are available.

¹⁰[GAO/AIMD-00-21.3.1](#). We analyzed these data from US-VISIT starting in fiscal year 2005 and from CTCEU starting in fiscal year 2004 because those are the first years for which US-VISIT and CTCEU have complete data.

POEs, these visits provided us with useful insights into the processes CBP uses to inspect travelers and collect nonimmigrant information at POEs, as well as the mechanisms DHS uses to share information about overstays. Additionally, to assess DHS's efforts to share overstay information, we interviewed officials from US-VISIT, ICE, and USCIS about their respective roles in sharing overstay information with DHS components and other federal, state, and local agencies, and also reviewed program documentation about the information sharing activities administered by these agencies.¹¹

We conducted this performance audit from February 2010 through April 2011, in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. A more detailed discussion of our scope and methodology is contained in appendix I.

Background

Process for Gaining Admission to the United States

Each year, millions of visitors come to the United States legally on a temporary basis. From fiscal year 2005 through fiscal year 2010, the State Department issued over 36 million nonimmigrant visas.¹² Approximately 82 percent of these visas were issued to nonimmigrants for business travel, pleasure, tourism, medical treatment, or for foreign and cultural exchange student programs. In addition, from fiscal year 2005 through fiscal year 2010, over 98 million visitors were admitted to the United States under the VWP.

Generally, nonimmigrants wishing to visit the United States gain permission to apply for admission to the country through one of two ways.

¹¹During the course of our review we determined that state and local law enforcement actions against overstays were limited and consequently would not be a primary focus of this report.

¹²Temporary visitors to the United States generally are referred to as "nonimmigrants." For a listing and descriptions of nonimmigrant categories, see 8 U.S.C. § 1101(a)(15); see also 8 C.F.R. § 214.1(a)(1)-(2).

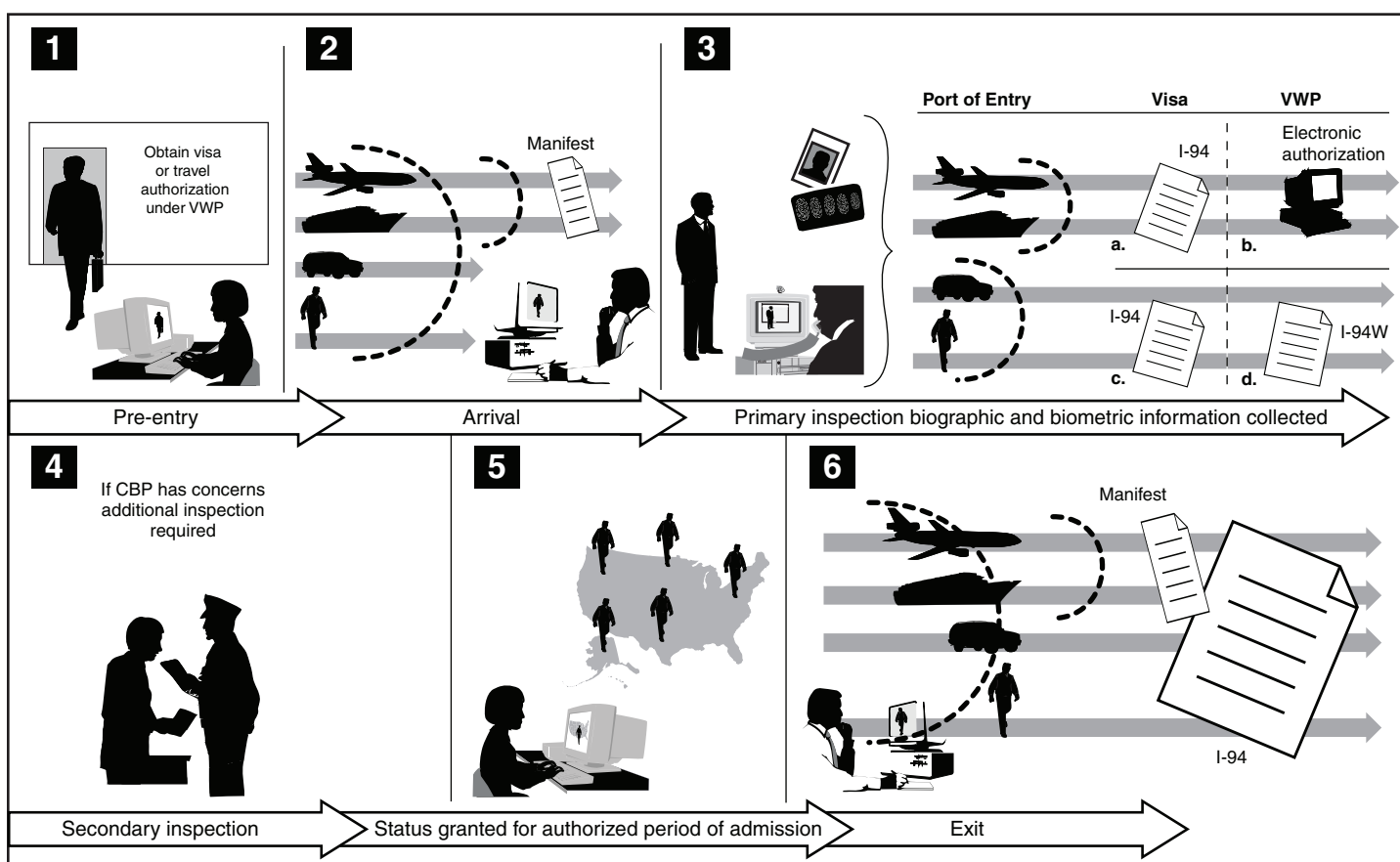
First, those eligible for the VWP apply online to establish eligibility to travel under the VWP prior to departing for the United States.¹³ Second, those not eligible for the VWP and not otherwise exempt from the visa requirement must visit the U.S. consular office with jurisdiction over their place of residence or, in certain circumstances, the area in which they are physically present but not resident, to obtain a visa.¹⁴ Upon arriving at a POE, nonimmigrants must undergo inspection by CBP officers, who determine whether or not they may be admitted into the United States. A CBP primary inspection officer first collects biographic and biometric information from a nonimmigrant. If during this process the officer has any concerns regarding the nonimmigrant's admissibility to the United States, the primary officer refers him or her for more in-depth, secondary inspection. If CBP determines a nonimmigrant is admissible, he or she is granted an authorized period of admission. In addition, visitors traveling on nonimmigrant visas are issued a Form I-94, and visitors from the VWP countries are issued a Form I-94W while in transit to or upon their arrival to a United States POE.¹⁵ Each visitor is to give the top half of the form to a CBP officer and to retain the bottom half, which should be collected when the visitor departs the country to record their exit. See figure 1 for the process by which nonimmigrants enter and exit the United States.

¹³Nonimmigrants eligible for the VWP that seek admission to the United States at a land POE do not apply online to establish eligibility.

¹⁴In certain circumstances citizens of Canada and the British Overseas Territory of Bermuda (and certain residents of other adjacent islands, such as the Bahamas) traveling to the United States as nonimmigrants do not require a visa. See 22 C.F.R. § 41.2(a)-(f).

¹⁵CBP is in the process of automating the I-94W so that it will be a paperless process. As of February 2011, the I-94W process was automated for travelers who apply online to establish their eligibility to travel under the VWP at all airports and most seaports. The I-94W process has not yet been automated at land POEs and a paper-based I-94W process is used. In addition to collecting individual information via the I-94/I94W process, CBP requires air and sea carriers to provide passenger manifest information for passengers entering and exiting the United States.

Figure 1: Process for Nonimmigrant Entry to and Exit from the United States



Source: GAO analysis of DHS information; and Art Explosion (clipart).

Definition and Regulatory Overview of Overstays

An overstay is a nonimmigrant who is legally admitted to the United States for an authorized period but remains in the country illegally after that period expired without obtaining an extension of stay or a change of

status or meeting other specific conditions, such as claiming asylum.¹⁶ In-country overstays refer to nonimmigrants who have exceeded their authorized periods of admission and remain in the United States without lawful status, while out-of-country overstays refer to individuals who have departed the United States but who, on the basis of arrival and departure information, stayed beyond their authorized periods of admission. As shown in table 1, nonimmigrants who overstay generally fall into one of three categories. The statute establishes consequences for nonimmigrant visa holders, foreign students and exchange visitors, and nonimmigrants admitted without a visa, such as VWP nonimmigrants, who overstay their authorized periods of admission.¹⁷

Table 1: Overstay Categories and Legal Consequences for Nonimmigrants Overstaying Their Authorized Periods of Admissions

Overstay category	Description of category	Legal consequence for overstaying
Nonimmigrant visa holders	Nonimmigrants, such as those traveling under temporary visas for business or pleasure (which includes medical treatment), including nonimmigrants required to register under the National Security Entry-Exit Registration System—a program that requires certain visitors or nonimmigrants to register with DHS for national security reasons. ^a Most nonimmigrant visa holders admitted for business, pleasure, or medical treatment generally are allowed to travel up to 6 months in the United States, after which they must depart the country unless granted an extension of stay.	In general, aliens who were unlawfully present in the United States for a period of more than 180 days but less than 1 year and voluntarily departed the United States prior to the commencement of legal proceedings to remove them from the country are inadmissible for 3 years. In addition, aliens who were unlawfully present in the United States for 1 year or more, and who again seek admission within 10 years of the date of their departure or removal from the United States, are inadmissible. ^b For nonimmigrants whose overstay violations fall below 180 days, their visas are void and the State Department has the discretion to determine whether to issue them new visas and CBP has the discretion to readmit them into the country.

¹⁶ Although overstays are sometimes referred to as visa overstays, we do not use that term in this report for two reasons. First, many visitors are allowed to seek admission to the United States without visas and to remain for specific periods, which they may overstay, such as visitors who enter using the VWP. Second, nonimmigrants can overstay an authorized period of admission set by a CBP officer at the border even though that authorized period may be shorter than the period of the visitors’ visas. For example, although the State Department may issue nonimmigrants visas that are valid for 6 months, CBP inspectors might issue them only a 6-week period of admission when they enter the United States. In such instances, if the nonimmigrants remain in the United States for 7 weeks they have overstayed their authorized periods of admission, and thus overstayed, even though their visas have not expired.

¹⁷ 8 U.S.C. § 1182(a)(9)(B)(i), (ii).

Overstay category	Description of category	Legal consequence for overstaying
Foreign students or exchange visitor visa holders	In general, foreign students remain “in status” and therefore eligible to stay in the United States under their student visas as long as they are enrolled in a qualified education program. Individuals traveling on student visas are not generally issued a specific date until which they are authorized to remain in the United States, but instead are admitted for what is referred to as “duration of status.” ^c This means that they may remain in the country until their visa expires so long as they maintain their student status (e.g., by enrolling in an academic program), and must depart within a specified period after completing their studies. Exchange visitors and vocational students generally are admitted for a specified period, although extensions are possible.	In general, if students and exchange visitors fail to maintain their student or exchange status or to depart on time, they are considered out of status and begin to accrue unlawful presence either on the day after USCIS or an immigration judge determines that they are out of status or on the day after their authorized period of admission expires (if given a specified date). They are subject to 3 and 10 year bars on their re-admission to the country, respectively, if they accrue more than 180 days or 1 year of unlawful presence.
Nonimmigrants admitted to the United States without a visa	Nonimmigrants who are admitted without a visa, including those traveling under the VWP. Nonimmigrants traveling to the United States through the VWP are admitted for up to 90 days.	If nonimmigrants traveling under the VWP stay beyond the authorized 90-day limit, they must obtain a visa from the U.S. consulate in their country of residence or physical presence in order to visit the United States again. They are subject to 3 and 10 year bars on their re-admission to the country, respectively, if they accrue more than 180 days or one year of unlawful presence.

Source: GAO analysis of DHS and State Department information.

^aThe visa categories provided to nonimmigrants traveling for these reasons are B-1 (temporary work), B-2 (pleasure or medical treatment), and B-1/B-2 (work and pleasure visa). Nonimmigrants may also travel under various other types of visas, such as for temporary religious and agricultural work.

^b8 U.S.C. §1182(a)(9)(B). For many overstays, unlawful presence generally begins to accrue once an alien remains in the United States beyond his or her authorized period of admission without authorization.

^cBecause DHS components identify and take enforcement action to address out-of-status students through the same processes as overstays, out-of-status students are included in the definition of overstays for the purpose of this report.

Comprehensive Biometric Entry and Exit System

The Immigration and Naturalization Service Data Management Improvement Act of 2000 required implementation of an integrated entry and exit data system for foreign nationals.¹⁸ This act replaced in its entirety a provision of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 that had required an automated system to record and then match the departure of every foreign national from the United States to the individual’s arrival record.¹⁹ The Immigration and

¹⁸8 U.S.C. § 1365a.

¹⁹Pub. L. No. 104-208, div. C, § 110, 110 Stat. 3009-546, 3009-558 to 59.

Naturalization Service Data Management Improvement Act instead required an electronic system that would provide access to and integrate foreign national arrival and departure data that are authorized or required to be created or collected under law and are in an electronic format in certain databases, such as those used at POEs and consular offices. In 2002, DHS initiated the US-VISIT program to develop a comprehensive entry and exit system to collect biometric data from aliens traveling through United States POEs. In 2004, US-VISIT initiated the first step of this program by collecting biometric data on aliens entering the United States. The Intelligence Reform and Terrorism Prevention Act of 2004 required the Secretary of Homeland Security to develop a plan to accelerate full implementation of an automated biometric entry and exit data system that matches available information provided by foreign nationals upon their arrival and departure from the United States.²⁰ In August 2007, we reported that while US-VISIT biometric entry capabilities were operating at air, sea, and land POEs, exit capabilities were not, and that DHS did not have a comprehensive plan or a complete schedule for biometric exit implementation. In addition, we reported that DHS continued to propose spending tens of millions of dollars on US-VISIT exit projects that were not well-defined, planned, or justified on the basis of costs, benefits, and risks.²¹ Since 2004, we have made numerous recommendations to address US-VISIT weaknesses, including that DHS ensure that US-VISIT expenditure plans fully disclose what system capabilities and benefits are to be delivered, by when, and at what cost, as well as how the program is being managed.²² DHS has reported taking action to address them.

With regard to a biometric exit capability at land POEs, we reported in December 2006 that US-VISIT officials concluded that, for various reasons, a biometric US-VISIT exit capability could not be implemented without

²⁰8 U.S.C. § 1365b.

²¹GAO, *Homeland Security: U.S. Visitor and Immigrant Status Program's Longstanding Lack of Strategic Direction and Management Controls Needs to Be Addressed*, [GAO-07-1065](#) (Washington, D.C.: Aug. 31, 2007).

²²GAO, *Homeland Security: Key US-VISIT Components at Varying Stages of Completion, but Integrated and Reliable Schedule Needed*, [GAO-10-13](#) (Washington, D.C.: Nov. 19, 2009); [GAO-07-1065](#); and *Homeland Security: First Phase of Visitor and Immigration Status Program Operating, but Improvements Needed*, [GAO-04-586](#) (Washington, D.C.: May 11, 2004).

incurring a major impact on land facilities.²³ Specifically, we reported that an interim nonbiometric technology test using radio frequency identification to collect departure information at land POEs did not meet the statutory requirement for a biometric exit capability and could not ensure that visitors who entered the country were those who departed. In December 2009, DHS initiated a land exit pilot to collect departure information from temporary workers traveling through two Arizona land POEs. Under this pilot, temporary workers who entered the United States at these POEs were required to register their final departure by providing biometric and biographic information at exit kiosks located at the POEs. DHS plans to use the results of this pilot to help inform future decisions on the pedestrian component of the long-term land exit component of a comprehensive exit system.

With regard to air and sea POEs, in April 2008, DHS announced its intention to implement biometric exit verification at air and sea POEs in a Notice of Proposed Rule Making.²⁴ Under this notice, commercial air and sea carriers would be responsible for developing and deploying the capability to collect biometric information from departing travelers and transmit it to DHS. DHS received comments on the notice and has not yet published a final rule. Subsequent to the rule making notice, on September 30, 2008, the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, was enacted, which directed DHS to test two scenarios for an air exit solution.²⁵ DHS conducted these pilots in 2009, and we reported on them in August 2010. We concluded that the limitations we identified with the pilots curtailed their ability to inform a decision for a long-term air exit solution and pointed to the need for additional sources of information on air exit's operational impacts.²⁶ We recommended that the Secretary of Homeland Security identify additional sources of information beyond the pilots, such as comments from the Notice of Proposed Rule Making, to inform an air exit solution decision. DHS agreed with the recommendation and stated that the pilots it

²³GAO, *Border Security: US-VISIT Program Faces, Strategic, Operational, and Technological Challenges at Land Ports of Entry*, [GAO-07-248](#) (Washington, D.C.: Dec. 6, 2006).

²⁴73 Fed. Reg. 22,065 (Apr. 24, 2008).

²⁵Pub. L. No. 110-329, 122 Stat. 3574, 3668-70 (2008).

²⁶GAO, *Homeland Security: US-VISIT Pilot Evaluations Offer Limited Understanding of Air Exit Options*, [GAO-10-860](#) (Washington, D.C.: Aug. 10, 2010).

conducted would not serve as the sole source of information to inform an air exit solution decision.

Federal Agencies' Roles and Responsibilities	DHS and its components and programs, including CBP, US-VISIT, ICE, and USCIS are primarily responsible for taking action to identify and address overstays, as shown in table 2. In addition, the State Department is responsible for ensuring that the department's visa issuances follow guidelines related to overstays to ensure that individuals who have overstayed and are ineligible for a visa do not receive one. State Department's responsibilities also include identifying and denying nonimmigrant visas to potential intending immigrants—individuals who intend to remain in the United States for an indefinite period.
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Table 2: Roles and Responsibilities of Federal Agencies for Addressing Overstays

Federal agency	Overall role	Overstay responsibilities
CBP Office of Field Operations	Executes policies and procedures at POEs for the screening of travelers and merchandise entering the United States.	- Determines nonimmigrant admissibility based in part on previous overstay violations and provides nonimmigrants an “admit until” date, by which the individual must leave the country to avoid overstaying. - Collects biographic and biometric information to verify nonimmigrant entry into the country and biographic information to verify nonimmigrant exit from the country.
DHS US-VISIT	Provides overstay and other information to various agencies.	- Identifies overstays by matching arrival and departure information collected primarily through the Arrival and Departure Information System. - Provides overstays information primarily to CTCEU and also shares overstay information with USCIS and CBP.
ICE Homeland Security Investigations CTCEU and field offices	Investigate a wide range of domestic and international activities arising from the illegal movement of people and goods into, within, and out of the United States.	- CTCEU: Uses information provided by US-VISIT and databases to identify visa, VWP, and national security registrant overstays, and out of status students, then assigns leads for further investigation by field offices. - Field offices: Investigate overstay cases and determine appropriate action to be taken, including initiating administrative procedures to remove an individual from the country, if appropriate.
ICE ERO	Identifies and apprehends aliens who are subject to removal from the country, detains these individuals when necessary, and removes illegal aliens from the United States.	- Contributes indirectly to overstay investigation and enforcement efforts through various programs, such as (1) the Criminal Alien Program, (2) the Fugitive Operations Support Center, (3) Secure Communities, and (4) the 287(g) program.^a - Responsible for the removal of deportable aliens from the United States.

Federal agency	Overall role	Overstay responsibilities
USCIS	Adjudicates applications and petitions for immigration and citizenship benefits, including applications for nonimmigrant benefits and statuses.	Adjudicates immigration benefit petitions, which if pending or approved, may preclude individuals from being classified as overstays.
State Department Bureau of Consular Affairs	Adjudicates visa applications to determine if an individual is required to obtain or is eligible for a visa, and if so, issuing a visa.	Responsible for ensuring that visas are issued in accordance with applicable overstay laws. For instance, overstay violations may make an applicant ineligible for a visa.

Source: GAO analysis of DHS and State Department information.

*The Criminal Alien Program identifies, processes, and removes criminal aliens incarcerated throughout the United States, focusing on those that pose a risk to public safety. The Fugitive Operations Support Center operates under the National Fugitive Operations Program and reviews and monitors certain overstay leads generated by CTCEU to determine if any pertain to individuals that are fugitives or that become fugitives. Secure Communities is an initiative to modernize the criminal alien enforcement process, including the improvement of information sharing between federal agencies and state and local law enforcement agencies. The 287(g) program allows state and local law enforcement agencies to enter into a partnership with ICE in order to receive delegated authority for immigration enforcement within their jurisdiction.

Federal agencies use various databases to determine whether nonimmigrants have overstayed their authorized periods of admission to the United States. As shown in table 3, these databases provide information on foreign nationals' arrival to and departure from the United States, foreign nationals' applications to change status once in the United States, and the status of foreign students.

Table 3: Key Federal Databases Used for Identifying Overstays

Database	Agency responsible for managing the database	Information maintained in the database related to overstays
Arrival and Departure Identification System	US-VISIT	Nonimmigrant arrival and departure information, the date until which an individual may remain in the United States, and various other information (e.g., the address where the individual will reside in the United States).
Automated Biometric Identification System	US-VISIT	Biometric information collected from nonimmigrants upon their entry into the United States (i.e., fingerprints and photographs).
TECS	CBP	Used at POEs to verify traveler information and contains lookouts—electronic alerts—for certain individuals (e.g., overstays). TECS also interfaces with other agencies' databases to share this information.
Student and Exchange Visitor Information System	ICE	Immigration status information for nonimmigrant foreign students and exchange visitors.
National Security Entry-Exit Registration System	ICE	Arrival, departure, and other information on nonimmigrants who are required to register with immigration authorities either at a POE or at a designated ICE office for national security reasons.

Database	Agency responsible for managing the database	Information maintained in the database related to overstays
Computer-Linked Application Information Management System 3	USCIS	Status of foreign nationals' petitions for extensions of stay or changes of immigration status (e.g., to convert from a tourist to a student).

Source: GAO analysis of DHS information.

Federal Agencies Take Actions against a Small Portion of the Estimated Overstay Population, but Strengthening Prioritization and Assessment of Overstay Efforts Could Improve Enforcement

ICE CTCEU is the primary federal entity responsible for taking enforcement action to address in-country overstays, but it investigates and arrests a small portion of the estimated in-country overstay population due to, among other things, ICE's competing priorities. While ICE reports allocating a small percentage of its resources to overstay investigations since fiscal year 2006, the agency has expressed an intention to augment the resources it dedicates to overstay enforcement efforts moving forward. Currently, CTCEU prioritizes in-country overstay leads based on various factors that consider the potential risks overstays may pose to national security and public safety, and field offices investigate those leads that CTCEU identified as a priority. CTCEU has not yet established mechanisms for assessing its performance in meeting program goals. In addition to ICE's overstay enforcement activities, State Department and CBP also take action to prevent out-of-country overstays from returning to the United States and to deny nonimmigrant visas to potential intending immigrants.

ICE Investigates Few In-Country Overstays, but Its Efforts Could Benefit from Improved Planning and Performance Management

CTCEU Efforts Result in Enforcement Action against a Small Portion of the Estimated In-Country Overstay Population

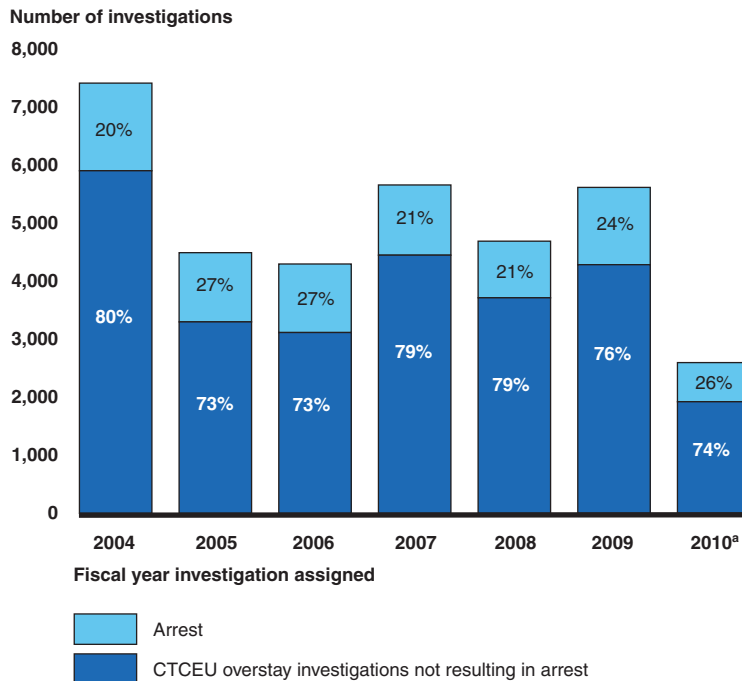
ICE CTCEU is the primary federal entity responsible for taking enforcement action to address in-country overstays, but it investigates and arrests a small portion of the estimated in-country overstay population. CTCEU identifies leads for overstay cases; takes steps to verify the accuracy of the leads it identifies by, for example, checking leads against multiple databases; and prioritizes leads to focus on those the unit identifies as being most likely to pose a threat to national security or public safety. CTCEU then requires field offices to initiate investigations on all priority, high-risk leads it identifies. For example, in 2009 CTCEU

identified a suspected overstay from the United Kingdom who, intelligence indicated, may have been a suspected terrorist. CTCEU referred this overstay lead to a field office for investigation, which resulted in an arrest of the suspected overstay in August 2010. According to CTCEU data, as of October 2010, ICE field offices had closed about 34,700 overstay investigations that CTCEU headquarters assigned to them from fiscal year 2004 through 2010.²⁷ These cases resulted in approximately 8,100 arrests, relative to a total estimated overstay population of 4 million to 5.5 million.²⁸ Although the percentage of CTCEU overstay investigations that resulted in arrest varied by the fiscal year in which they were initiated, Homeland Security Investigations field offices arrested from 20 to 27 percent of nonimmigrant overstays who were subjects of those investigations, as shown in figure 2.

²⁷CTCEU also investigates suspected VWP overstays, out-of-status students and National Security Entry-Exit Registration System violators. For the purpose of this discussion, these investigations are referred to collectively as “overstay” investigations.

²⁸ICE is unable to provide data on the number of overstays arrested by CTCEU who were detained or deported due to the configuration of its information systems. While CTCEU tracks overstay arrests, prior to fiscal year 2011 it did not track the outcomes of overstay cases following arrest because ERO, not CTCEU, is responsible for the detention and deportation of overstays. While ERO tracks the detention and deportation of individuals by the section of law they violate, overstays fall under a section of law that includes other nonimmigrant violations, and thus overstay cases cannot be easily identified. CTCEU officials reported that the office is planning to modify its database in order to track these data going back to fiscal year 2010. In addition, prior to fiscal year 2011, CTCEU did not track how many of its investigations resulted in criminal versus non-criminal arrests, and therefore, cannot quantify how many of the approximately 8,100 overstay arrests it made based on cases initiated in fiscal year 2004 through 2010 were criminal or civil (i.e., administrative) arrests. The most recent estimates from the Pew Hispanic Center approximated that, in 2006, out of an unauthorized resident alien population of 11.5 million to 12 million in the United States, about 4 million to 5.5 million were overstays. Pew Hispanic Center, *Modes of Entry for the Unauthorized Migrant Population* (Washington, D.C.: May 22, 2006).

Figure 2: Percentage of Closed CTCEU In-Country Overstay Investigations Resulting in Arrest (as of Oct. 2010)



Source: GAO analysis of CTCEU data.

^aAccording to CTCEU officials, fewer cases that were initiated in fiscal year 2010 have been closed relative to other years because a case that is assigned to a field office by CTCEU headquarters during one fiscal year may not be closed until a subsequent fiscal year. As such, field offices are working to close overstay cases that CTCEU assigned to them in fiscal year 2010. According to CTCEU data, as of October 2010, approximately 4,000 overstay investigations assigned to field offices from fiscal year 2004 through 2010 had not yet been closed by field offices.

Note: Data presented in this table include outcomes of CTCEU investigations of suspected visa overstays, VWP overstays, National Security Entry-Exit Registration System overstays, and out-of-status students. These data do not include overstays arrested through ERO programs. ERO personnel may encounter overstays in the course of their work but they do not directly focus on overstay enforcement.

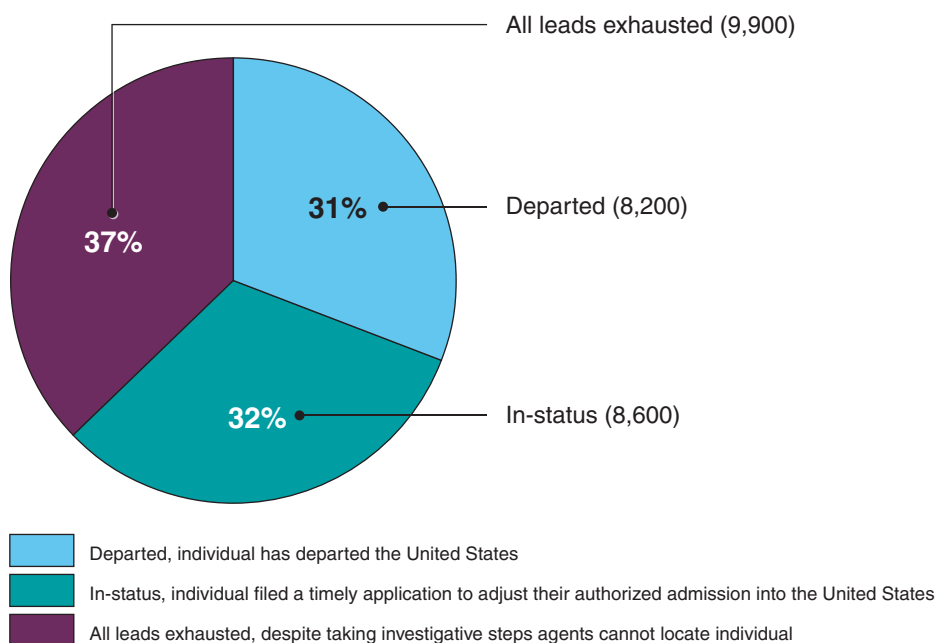
In addition to overstay investigations that CTCEU headquarters assigns to ICE field offices, the offices can open their own overstay investigations. For example, CTCEU agents at all six field offices we visited stated that their offices have initiated their own overstay investigations. Also, ICE agents may encounter and arrest overstays during investigations they conduct through ICE's other investigative programs, such as worksite enforcement. Because ICE codes these investigations differently in its information systems, they are not included in the arrest data in figure 2.

CTCEU overstay investigations that do not lead to an arrest result in one of three outcomes: (1) evidence is uncovered indicating that the suspected overstay has departed the United States; (2) evidence is uncovered indicating that the subject of the investigation is in-status (e.g., the subject filed a timely application with USCIS to change his or her status and/or extend his or her authorized period of admission in the United States); or (3) CTCEU investigators exhaust all investigative leads and cannot locate the suspected overstay.²⁹ Of the approximately 34,700 overstay investigations assigned by CTCEU headquarters that ICE field offices closed from fiscal year 2004 through 2010, about 8,100 (or 23 percent) resulted in arrest and about 26,700 (or 77 percent) resulted in one of these three outcomes.³⁰ Among these approximately 26,700 cases, 31 percent resulted in a departure finding; 32 percent in an in-status finding; and 37 percent in all leads being exhausted, as presented in figure 3.

²⁹With regard to the second outcome, that the subject is found to be in-status, under certain circumstances, an application for extension or change of status can temporarily prevent a visitor's presence in the United States from being categorized as unauthorized. See Donald Neufeld, Acting Associate Director, Domestic Operations Directorate, USCIS, "Consolidation of Guidance Concerning Unlawful Presence for Purposes of Sections 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(I) of the [Immigration and Nationality] Act," memorandum, Washington, D.C., May 6, 2009.

³⁰Investigations resulting and not resulting in arrest do not total 34,700 due to rounding.

Figure 3: Fiscal Years 2004-2010 Outcomes of CTCEU Overstay Cases Not Resulting in Arrest



Source: GAO analysis of CTCEU data.

Note: Data presented in this table include outcomes of CTCEU investigations of suspected visa overstay, VWP overstay, National Security Entry-Exit Registration System overstay, and out-of-status students.

ICE officials attribute the significant portion of overstay cases that result in a departure finding, in-status finding, or with all leads being exhausted generally to three issues: difficulties associated with locating suspected overstay, data timeliness, and data completeness.

- Difficulties locating suspected overstay.* ICE agents reported locating suspected overstay as challenging because the address ICE has on file for a suspect may be outdated or inaccurate, and if ICE agents are unable to locate the suspect after taking recommended investigative steps, they will close the case with an all leads exhausted outcome. CTCEU agents in two of the six offices we visited identified locating suspected overstay as the most challenging aspect of conducting overstay investigations. They explained that, although CTCEU headquarters only assigns investigations to field offices if there is a last known address for the subject, the subject may have moved to a new address or have never resided there in the first place. For example, the address available to CTCEU agents may be the one that the nonimmigrant provided on his or her Form I-94/I-94W when he or

she was admitted to the United States, and the nonimmigrant may have subsequently moved.³¹ Prior to closing a case and reporting that all leads have been exhausted, CTCEU recommends that agents perform several steps to try to obtain additional leads for the case, including contacting relatives or other known associates, searching Internet sites (e.g., Google and Facebook), and contacting other law enforcement agencies. If an agent performs such steps and still cannot identify a valid address for a suspected overstay, the case will be closed with an outcome of all leads exhausted. These cases are subsequently monitored by a system that automatically queries various databases, such as Lexis-Nexis, on a weekly basis for new information relating to the location of the suspected overstay. If such information is identified, CTCEU will reopen the investigation.

- *Data timeliness.* With regard to data timeliness, new information may be entered in DHS systems between the time CTCEU headquarters assigns an investigation to a field office and the time that the office undertakes the investigation that permits the field office to close the investigation. CTCEU agents in four of the six field offices we visited told us that additional data entered in this manner contributes to the frequency with which they close cases with a departure or in-status finding. For example, when a CTCEU headquarters analyst reviews an overstay lead, the analyst is to check USCIS electronic information systems to see if the suspected overstay has filed a benefit application with USCIS that places him or her in-status. Although the suspected overstay may have done so, the application may not yet appear in USCIS's systems because the agency is still processing it and has not posted its receipt. When a field office agent opens an investigation, the first task the agent is to perform is to check DHS information systems for any new information related to the suspected overstay under investigation. If USCIS has subsequently posted that the suspected overstay has a pending application in its systems, the field office agent may see this information, determine that the suspected overstay under investigation is in-status, and close the investigation with an in-status outcome.
- *Data completeness.* Incomplete data in DHS systems contribute to investigations resulting in departure findings when ICE field agents

³¹Visitors traveling on nonimmigrant visas are issued a Form I-94 and visitors from the VWP countries are issued a Form I-94W while in transit to or upon their arrival to a United States POE. The Form I-94/I-94W, among other things, records the date a nonimmigrant's authorized period of admission expires and the address where the nonimmigrant reports he or she will be staying in the United States.

uncover evidence that the subject of a CTCEU investigation departed even though DHS systems contain no record of their departure. CTCEU agents in four of the six offices we visited cited missing departure data as a cause of cases resulting in a departure finding. For example, if the suspected overstay under investigation exited the United States through a land POE and did not submit an I-94/I-94W form to record his or her departure, there will be no indication in DHS systems that the suspected overstay has left the country, and CTCEU may open an investigation of the individual. Through ensuing investigative efforts, such as attempting to contact the suspected overstay by telephone or electronic mail, or asking Canadian authorities to review their records to determine if the suspected overstay entered Canada, CTCEU field agents may secure evidence that the suspected overstay has departed the United States and close the investigation accordingly.³²

In addition to CTCEU investigative efforts, other ICE programs within ERO may take enforcement action against overstays, though none of these programs solely or directly focus on overstay enforcement. For example, if the ERO Criminal Alien Program identifies a criminal alien who poses a threat to public safety and is also an overstay, the program may detain and remove that criminal alien from the United States. Further, ERO's National Fugitive Operations Program may undertake efforts to locate a nonimmigrant who was ordered removed based on various immigration violations, including an overstay violation, but did not surrender for removal. ERO cannot reliably quantify the results of its in-country overstay enforcement efforts because in its case management system, ERO does not separately track overstay cases. Rather, ERO's cases are coded by the section of law that the subject violated, and these sections apply to violations that are broader than exclusively overstay violations. For example, 8 U.S.C. § 1227(a)(1)(C)(i) makes any alien who has failed to maintain or comply with the conditions of his or her nonimmigrant status deportable. In addition to overstay violations, this could include remaining in the United States while no longer working as a foreign diplomat, religious worker, or temporary agricultural worker, among other possible violations. ERO officials told us that ERO plans to develop metrics for tracking the results of its in-country overstay enforcement efforts, pending

³²In February 2011, the United States announced plans to work with Canada on border security and other issues, including working towards an integrated United States-Canada entry-exit system. This effort would include working towards the exchange of relevant entry information in the land environment so that documented entry into one country serves to verify exit from the other country.

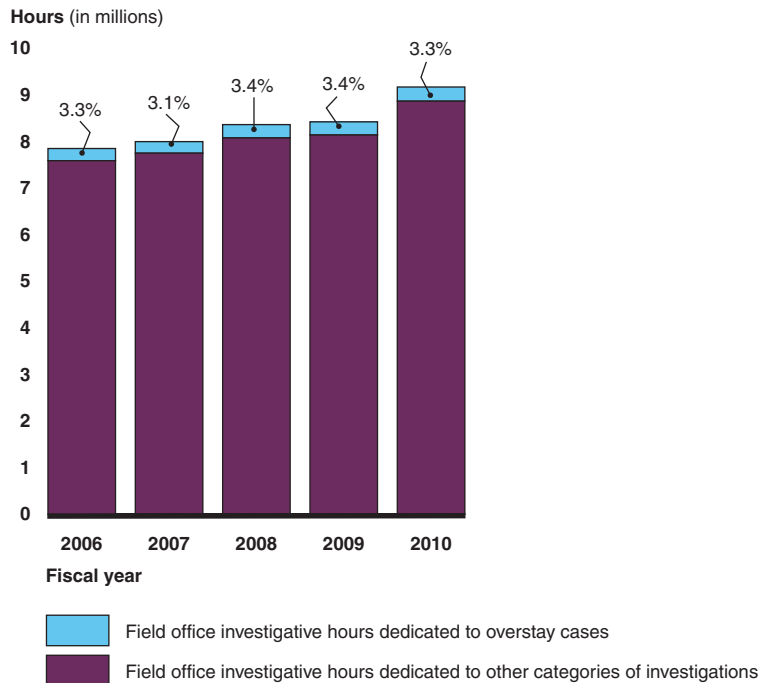
ICE Allocates a Small
Percentage of Resources to
Overstay Enforcement, but
Plans to Augment Overstay
Enforcement Resources

the outcome of an ongoing internal ICE review of whether to shift more overstay enforcement responsibilities to ERO in the future.

ICE has reported allocating a small percentage of its resources in terms of investigative work hours to overstay investigations since fiscal year 2006, but the agency has expressed an intention to augment the resources it dedicates to overstay enforcement efforts moving forward. According to DHS, ICE received approximately \$1.7 billion in funding and about 8,000 full time equivalent positions in fiscal year 2010 for domestic investigations, which include overstay investigations.³³ From fiscal years 2006 through 2010, ICE reported devoting from 3.1 to 3.4 percent of its total field office investigative hours to CTCEU overstay investigations, as shown in figure 4.

³³DHS Congressional Budget Justification for Fiscal Year 2012.

Figure 4: ICE Reported Percentage of Field Office Investigative Hours Dedicated to Overstay Cases



Source: GAO analysis of ICE data.

Note: These data do not include ERO work hours, which may include some hours spent taking enforcement actions to address overstays. These data also do not include hours related to administrative activities associated with ICE investigations.

In addition to CTCEU investigative efforts, other ICE programs within ERO may dedicate resources to overstay enforcement, such as ERO's Criminal Alien Program and National Fugitive Operations Program. According to ERO officials, because overstay enforcement is not a specific focus of any of ERO's programs, ERO does not track the number of work hours it dedicates to enforcement actions pertaining to overstays, but intends to do so if it is assigned additional overstay enforcement responsibilities as a result of ICE's ongoing internal review.

ICE attributes the small percentage of investigative resources it reports allocating to overstay enforcement efforts primarily to competing enforcement priorities. According to the ICE Assistant Secretary, ICE has resources to remove 400,000 aliens per year, or less than 4 percent of the estimated removable alien population in the United States. In light of the large number of immigration violators the agency is responsible for

addressing and its finite enforcement resources, in June 2010, the Assistant Secretary stated that ICE must prioritize the use of its resources to ensure that its efforts to remove aliens reflect the agency's highest priorities, namely nonimmigrants, including suspected overstays, who are identified as high risk in terms of being most likely to pose a risk to national security or public safety. In addition, the Assistant Secretary stated that the level of resources ICE dedicates to overstay enforcement efforts reflects the distribution of its resources among its competing enforcement requirements. As a result, ICE dedicates its limited resources to addressing overstays it identifies as most likely to pose a potential threat to national security or public safety and does not generally allocate resources to address suspected overstays that it assesses as non-criminal and low risk.

ICE has indicated it may allocate more resources to overstay enforcement efforts moving forward, and that it plans to focus primarily on suspected overstays who ICE has identified as high risk or who have recently overstayed their authorized periods of admission. For example, the ICE Strategic Plan Fiscal Year 2010-2014 states that the agency plans to invest more resources to identify and remove aliens soon after they overstay in those fiscal years. Further, according to ICE's Assistant Deputy Director, ICE intends to put more resources towards identifying and removing aliens who were admitted to the United States in the current fiscal year and overstayed their authorized period of admission than aliens who entered the country 10 years ago and overstayed. This official explained that ICE prioritizes recent overstays in part because they have generally established fewer ties in U.S. communities, and as a result, are more likely to be eligible for removal under law. However, regardless of the length of time a nonimmigrant has overstayed in the United States, ICE can take enforcement action against the overstay, including in cases when ICE encounters an overstay through other investigative programs or efforts, according to this official. In addition, the Assistant Secretary of ICE stated in March 2010 that it is imperative to expand the nation's enforcement efforts concerning overstays and other status violations, and ICE is reviewing its policies, programs, and procedures concerning overstays.

According to senior ICE officials, as of January 2011, ICE is considering expanding ERO's overstay enforcement role by proposing the development of teams of officers within ERO dedicated specifically to enforcement action against civil (non-criminal) overstays and transferring some or all CTCEU overstay programming from Homeland Security Investigations to ERO. According to senior ERO officials, ICE senior management is reviewing an ERO proposal to create 5 to 7 teams of about

16 officers each devoted exclusively to overstay enforcement. According to ICE's Assistant Deputy Director, ICE and DHS management concur with this proposal and are considering requesting additional funds to support these teams in a future budget request.³⁴ According to ERO officials, these teams would be located in the largest U.S. tourist destinations, such as New York and Los Angeles, and would each be projected to close approximately 600 cases per year. Although it is too early to tell what impact, if any, ICE's plans for allocating additional resources would have on the results of its overstay enforcement activities, the creation of ERO teams dedicated to taking enforcement action against overstays would represent an expansion of ICE's overstay enforcement efforts. In addition, ERO officials told us that ICE is considering transferring at least part of CTCEU's efforts for addressing overstays from Homeland Security Investigations to ERO, although no decision has been reached. According to ICE's Assistant Deputy Director, it is ICE's intention for ERO to focus on civil immigration enforcement and Homeland Security Investigations to focus on taking enforcement actions to address criminal violators and violators who pose a threat to national security; as overstaying is a civil violation, civil overstay enforcement falls within ERO's area of responsibility.

As an intermediate step, in the summer of 2010, CTCEU began to provide all overstay leads it identified as low risk in terms of posing a threat to national security or public safety to the ERO Criminal Alien Program. However, according to the Acting Unit Chief, the Criminal Alien Program does not have sufficient resources to investigate these leads, and the program is still in the process of determining how to most efficiently and effectively utilize its resources to address civil, low-risk overstay violators. According to senior ERO officials, although there has been discussion within ICE about augmenting ERO resources for investigating overstays through programs such as the Criminal Alien Program, no specific plans for doing so have been established.

According to ERO officials, ERO does not plan to assume responsibility for a portion of civil overstay enforcement until ICE assesses the funding and resources that doing so would require. ERO officials stated that ERO and Homeland Security Investigations have begun to assess these requirements but have not established a time frame for completing this assessment because ICE is considering transferring some overstay

³⁴DHS did not request funds for this purpose in its fiscal year 2012 budget request.

CTCEU Considers Various
Risk-Based Factors in
Prioritizing Its Overstay Leads

programming from CTCEU to ERO concurrently with considering the transfer of other Homeland Security Investigations functions to ERO. Program management standards state that successful execution of any program includes developing plans that include a time line for program deliverables. By developing a time frame for completing a resource and funding assessment and utilizing the assessment findings, as appropriate, ICE would be better positioned to hold its staff accountable for completion of efforts as management intended, thereby strengthening its planning efforts for executing its overstay enforcement activities moving forward.

CTCEU prioritizes investigation of in-country overstay leads based on the perceived risk each lead is likely to pose to national security and public safety as determined by threat analysis. CTCEU investigations focus on suspected overstays it identifies as most likely to engage in activities that may pose a threat to national security or public safety. In order to prioritize investigation of overstay leads, CTCEU uses an automated system to assign each overstay lead a priority ranking based on threat intelligence information. The specific criteria CTCEU uses to rank the priority level of leads are determined tri-annually based on current threat information by the Compliance Enforcement Advisory Panel, an interagency panel of intelligence experts assembled by ICE for the purpose of determining these criteria.³⁵ Although the threat-related criteria identified by the Compliance Enforcement Advisory Panel and used by CTCEU to prioritize overstay investigations are not publicly available, they center on country of birth, age, and gender. For example, CTCEU may assign all females within a specific age range who were born in a particular country the same priority ranking. In addition, if other threat information indicates that an individual or group of suspected overstays that do not fit within the specific criteria determined by the Compliance Enforcement Advisory Panel are high risk for engaging in activity that may pose a threat to national security or public safety, CTCEU will assign them as high priority for investigation. For example, upon receiving intelligence indicating that a suspected VWP overstay who did not fit within CTCEU's priority criteria was wanted by Argentinean authorities for drug smuggling, CTCEU prioritized the case for investigation. If a review by CTCEU analysts indicates that there is sufficient information associated

³⁵ Compliance Enforcement Advisory Panel members include representatives from the National Counterterrorism Center, the Federal Bureau of Investigation, CBP, the State Department, and the DHS Office of Intelligence and Analysis, and other intelligence community stakeholders.

CTCEU Could Benefit from
Establishing Mechanisms for
Assessing Performance to
Address Overstays

with a priority lead (e.g., an address for the alien in question) to make it viable for investigation, CTCEU assigns the lead to a field office for mandatory investigation.

CTCEU has not yet established mechanisms for assessing its performance in meeting program goals. We have previously reported that leading organizations promote accountability by establishing results-oriented, outcome goals and corresponding performance measures by which to gauge progress.³⁶ In addition, *Standards for Internal Control in the Federal Government* and the Office of Management and Budget call for agencies to have performance measures and indicators that are linked to mission, goals, and objectives to allow for comparisons to be made among different sets of data so that corrective actions can be taken if necessary. Measuring performance allows organizations to track the progress they are making toward their goals and gives managers critical information on which to base decisions for improving their progress. According to DHS training materials, information and data gathered from performance measurement is in part to be used to plan for future resource allocations, to better manage programs, and to communicate to stakeholders the value the program is delivering.

Although CTCEU has established an output program goal and target and tracks various performance measures, it does not have a mechanism in place to assess the outcomes of its efforts, particularly the extent to which the program is meeting its mission as it relates to overstays—to prevent terrorists and other criminals from exploiting the nation's immigration system.³⁷ CTCEU's program goal is to prevent criminals and terrorists from exploiting the immigration system by proactively developing cases

³⁶See, for example, GAO, *Combating Gangs: Better Coordination and Performance Measurement Would Help Clarify Roles of Federal Agencies and Strengthen Assessment of Efforts*, [GAO-09-708](#) (Washington, D.C.: July 24, 2009); and GAO, *Executive Guide: Effectively Implementing the Government Performance and Results Act*, [GAO/GGD-96-118](#) (Washington, D.C.: June 1996).

³⁷OMB Circular A-11 states that output measures describe the level of activity that will be provided over a period of time, including a description of the characteristics (e.g., timeliness) established as standards for the activity. Outputs refer to the internal activities of a program (i.e., the products and services delivered). CTCEU's mission is to prevent terrorists and other criminals from exploiting the nation's immigration system and to expand the resource equities within the various intelligence community and federal agencies. As CTCEU's efforts to address overstays most closely contribute to its mission to prevent terrorists and other criminals from exploiting the nation's immigration system, we are focusing on this aspect of its mission for the purpose of this discussion.

for investigation, and its performance target is to send 100 percent of verified priority leads to field offices as cases.³⁸ CTCEU also tracks a variety of output measures, such as the number of cases completed and their associated results (i.e., arrested, departed, in-status, or all leads exhausted) and average hours spent to complete an investigation. While CTCEU's performance target permits it to assess an output internal to the program—the percentage of verified priority leads it sends to field offices for investigation—it does not provide program officials with a means to assess the impact of the program in terms of preventing terrorists and other criminals from exploiting the immigration system. According to senior CTCEU officials, the unit measures its progress against an output performance goal and target because the unit has not identified a means by which to measure program outcomes. Specifically, the unit has not identified any means to assess CTCEU's progress in meeting its mission other than to point out retroactively whether or not terrorists or criminals have exploited the nation's visa programs. If no status violators, including overstays, attack the United States or otherwise compromise homeland security, officials stated that they view this as an indication that the unit is performing well. However, CTCEU cannot directly attribute the fact that no overstays have attacked or compromised U.S. homeland security to its overstay enforcement efforts, as various other factors could affect or contribute to this outcome.

We and the Office of Management and Budget have acknowledged the difficulty in developing outcome measures for programs that aim to deter or prevent specific behaviors, and have reported that in such an instance proxy measures—or indirect indicators—should be designed to assess the effectiveness of program functions.³⁹ CTCEU officials agreed that the use of proxy measures with associated performance targets could better enable the unit to gauge its performance in meeting its mission and to measure the effectiveness of its overstay enforcement efforts. For example, a proxy measure for CTCEU could be the number of cases resulting in all leads exhausted per investigative hours worked, and the

³⁸Verified leads are leads that CTCEU has determined to be accurate and viable by analyzing information from government and commercial databases containing information related to immigration status. For example, these procedures are intended to verify that an individual suspected of overstaying has not departed the country or been granted an extension of stay by USCIS.

³⁹GAO, *Supply Chain Security: Examinations of High-Risk Cargo at Foreign Seaports Have Increased, but Improved Data Collection and Performance Measures Are Needed*, [GAO-08-187](#) (Washington, D.C.: Jan. 25, 2008).

target could be to have fewer than an established number of cases per investigative hours worked result in this outcome. By undertaking efforts to develop performance goals and targets for outcome-oriented measures—or proxy measures if program outcomes cannot be captured—CTCEU could be positioned to track its performance in meeting its mission. This performance information, in turn, could provide CTCEU managers with information on which to base decisions for improving its efforts and performance to prevent terrorists and other criminals from exploiting the nation’s immigration system.

The State Department and CBP Have Taken Action to Prevent Ineligible Out-of-Country Overstays from Returning to the United States

In addition to ICE’s activities, the State Department and CBP have taken action to prevent ineligible out-of-country overstays from returning to the United States, and the State Department also has acted to deny nonimmigrant visas to potential intending immigrants. In general, foreign nationals who have departed the United States after having remained in the country beyond their authorized periods of admission are ineligible to return to the United States for 3 years if they overstayed by 181-364 days, and 10 years if they overstayed by 365 or more days. The State Department and CBP are responsible for, respectively, preventing ineligible violators from obtaining a new visa or being admitted to the country at a POE.

According to State Department data, the department denied about 52,800 nonimmigrant visa applications and about 114,200 immigrant visa applications from fiscal year 2005 through fiscal year 2010 due, at least in part, to applicants having previously been unlawfully present in the United States for more than 180 days, according to statute.⁴⁰ These numbers equate to, on average, approximately 8,800 nonimmigrant visa refusals and 19,000 immigrant visa refusals per year from fiscal year 2005 through 2010.⁴¹ According to State Department officials, although a small portion of these refusals refer to actions taken against people that illegally entered the United States without inspection or unlawfully remained in the country after having their status terminated, most of these visa refusals

⁴⁰State Department data indicate that a total of about 36.5 million nonimmigrant visas and about 2.7 million immigrant visas were issued from fiscal year 2005 through 2010.

⁴¹Some of these visa refusals were ultimately overcome based on the availability of evidence that showed the applicant’s ineligibility no longer applied, the approval of a waiver, or by other relief as provided by law. According to State Department data, from fiscal year 2005 through 2010, a total of about 4,500 nonimmigrant visa application refusals and about 60,800 immigrant visa application refusals based on the applicant having been unlawfully present for more than 180 days were ultimately overcome.

were due to applicants having overstayed their authorized periods of admission to the United States by more than 180 days.⁴² Similarly, CBP reported that it refused admission to about 5,000 foreign nationals applying for admission to the United States from fiscal year 2005 through 2010 (an average of about 830 per year) specifically due to the applicants' previous status as unlawfully present in the United States for more than 180 days.⁴³ The State Department may also deny applications for nonimmigrant visas if there is reason to suspect that the applicants do not intend to abide by the terms of the visas and are likely to remain in the United States beyond their authorized periods of admission. In effect, by denying intending immigrants nonimmigrant visas the State Department is acting to prevent these nonimmigrants from having the opportunity to overstay were they to be admitted to the United States.⁴⁴ Although the manner in which the State Department tracks nonimmigrant visa refusal data does not allow it to isolate the number of refusals specifically targeting intending immigrants, State Department officials reported that this is a common reason for nonimmigrant visa applications to be refused.

⁴² According to State Department officials, the State Department records the results of adverse actions taken against aliens applying for a new visa based on the section of law under which the alien is inadmissible. As a result, the State Department is unable to isolate the number of visas denied due to applicants having accrued at least 181 days of unlawful presence by overstaying their authorized periods of admission from those that accrued unlawful presence through other means (e.g., entering without inspection). Also, since U.S. law does not explicitly render aliens that overstayed by 180 days or less inadmissible to the country, actions taken against these aliens are recorded under other broader grounds of inadmissibility that may apply to, but are not limited to, overstays. Consequently, the State Department is unable to quantify the number of visas it has denied on the basis of applicants having overstayed by 180 days or less.

⁴³ CBP data indicates that, in total, about 1.3 million foreign nationals were determined to be inadmissible to the United States by the CBP Office of Field Operations from fiscal year 2005 through 2010. As is the case with the State Department, CBP is unable to isolate and quantify the number of aliens it has determined to be inadmissible due to the aliens having overstayed by 180 days or less, because actions taken against these aliens are recorded under grounds of inadmissibility that may apply to, but are not limited to, overstays.

⁴⁴ State Department consular officers regularly conduct targeted validation studies to evaluate the results of a sample of their visa issuance decisions in various visa categories. The results of these studies are used to help refine and improve the consulate's future visa issuance decisions, and determining the extent to which nonimmigrant visa recipients overstay their authorized period of admission in the United States is one factor that is considered in these validation studies. In order to conduct these studies, the State Department works with US-VISIT to obtain, among other types of information, arrival and departure data for the recipients of the visas being studied.

More Reliable, Accessible Data Could Improve DHS's Efforts to Identify and Share Information on Overstays

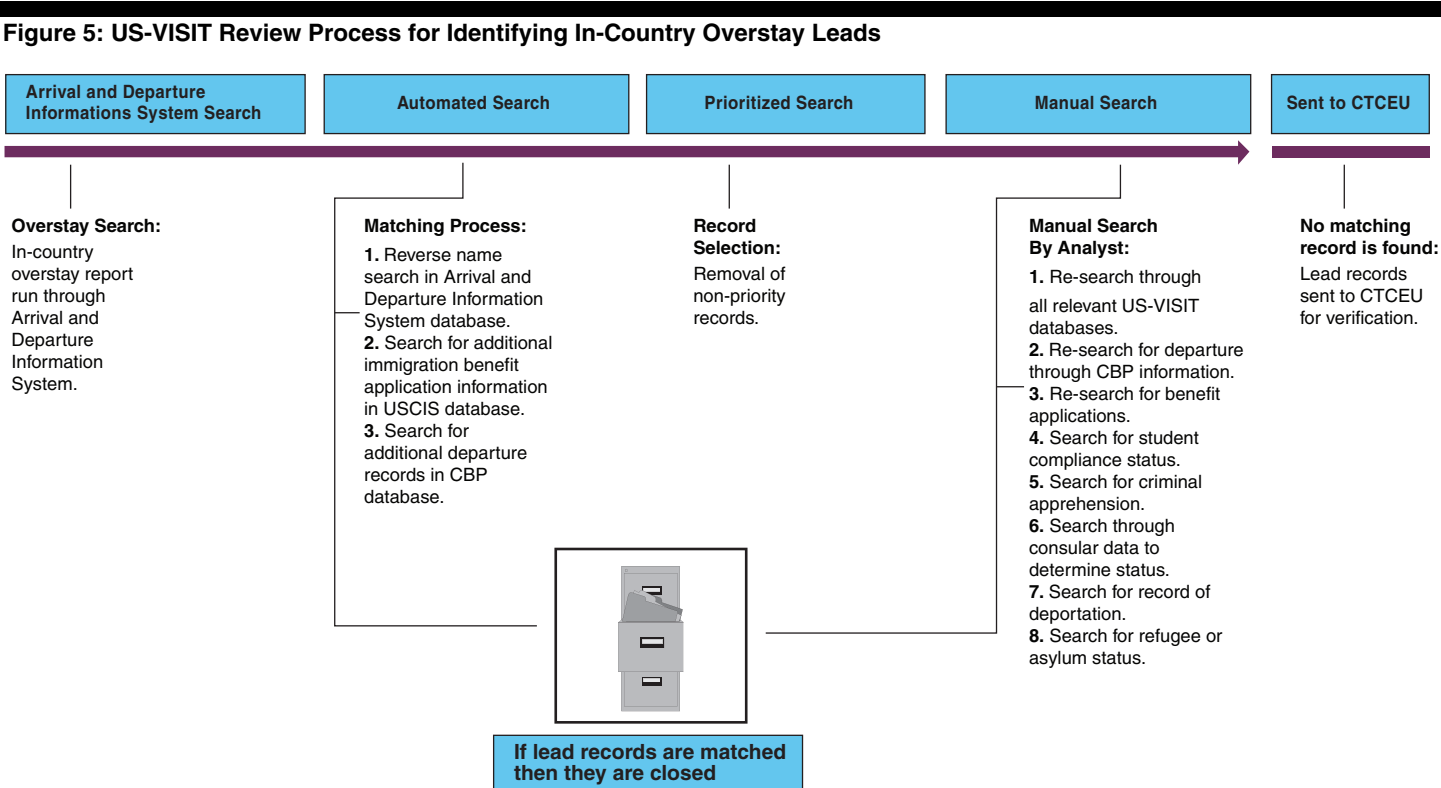
In the absence of a comprehensive biometric entry and exit system for identifying overstays DHS relies on two components—US-VISIT and CTCEU—to identify overstays primarily through analysis of biographic information. However, DHS's efforts to identify and report on overstays are hindered by unreliable data. Further, DHS has established a variety of mechanisms, such as overstay lookouts, or electronic alerts, to share information pertaining to overstays with its components and with federal, state, and local agencies that may encounter overstays as part of their law enforcement or other activities. DHS creates lookouts for certain categories of overstays, and expanding the categories of overstays assigned these lookouts could help improve CBP's ability to determine if these nonimmigrants should be re-admitted to the United States. Additionally, while CBP officers at POEs have reported facing challenges in obtaining information from USCIS to help make admissibility decisions regarding suspected overstays, USCIS has long-term plans to help address these challenges.

Improved Data Reliability Could Strengthen DHS Processes to Identify Overstays

DHS Identifies Overstays Primarily Based on Biographic Entry and Exit Data

In the absence of a comprehensive biometric entry and exit system for identifying and tracking overstays, US-VISIT and CTCEU primarily analyze biographic entry and exit data collected at land, air, and sea POEs to identify overstays. US-VISIT identifies both in-country and out-of-country overstays by analyzing biographic data maintained in the Arrival and Departure Information System—a database that contains information on aliens' entry, exit, and change of status—and electronically and manually comparing Arrival and Departure Information System records to information in other databases to find matches that demonstrate that a nonimmigrant may have, for instance, departed the country or filed an application to change status and thus is not an overstay (see figure 5). For cases in which US-VISIT's analysis shows that a nonimmigrant may be an in-country overstay, DHS sends the lead to CTCEU for further analysis and possible investigation. For cases in which US-VISIT's analysis shows that a nonimmigrant visa holder departed the United States—an out-of-country overstay—but the departure was more than 90 days after the nonimmigrant's authorized period of admission expired, US-VISIT creates a lookout that CBP officers at POEs and State Department officials at overseas consulates can access to determine whether that nonimmigrant

is eligible for re-admission at POEs or can receive a new visa upon application at a U.S. consulate. Appendix II provides more detailed information on US-VISIT's processes for analyzing in-country and out-of-country overstay leads.

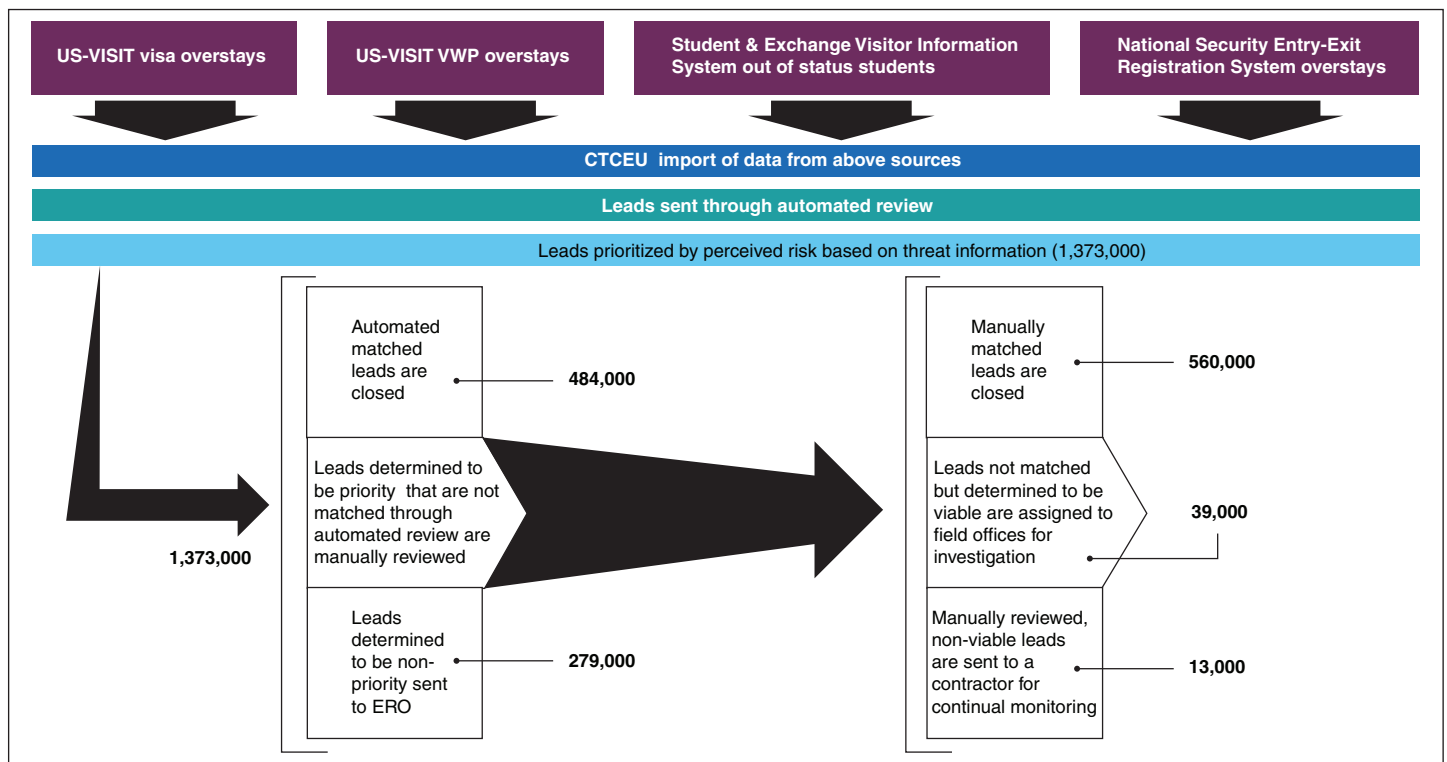


Source: GAO analysis of US-VISIT information; and Art Explosion (clipart).

In addition to US-VISIT's process for identifying in-country and out-of-country overstays, CTCEU conducts its own analysis to identify in-country overstays. Specifically, CTCEU analyzes (1) in-country visa overstay leads provided by US-VISIT, (2) in-country VWP overstay leads provided by US-VISIT, (3) out-of-status students based on Student and Exchange Visitor Information System data, and (4) overstay leads based on National Security Entry-Exit Registration System data. CTCEU refers viable leads—that is, leads for which CTCEU can identify a last known address—to ICE Homeland Security Investigations field offices for investigation, as shown in figure 6. CTCEU analysts conduct automated and manual checks to compare leads from the four sources against records in other databases that contain information on, for example, nonimmigrants' applications to change status, to determine whether nonimmigrants have overstayed and

are likely still present in the United States.⁴⁵ As shown in figure 6, the majority of leads from fiscal years 2004 through 2010 were closed through automated and manual checks, meaning that the nonimmigrants were found to have departed the United States or were determined to be in status. After the completion of manual checks, about 3 percent of leads were considered to be priority with viable addresses and sent to ICE field offices for investigation from fiscal years 2004 through 2010. Appendix II provides more detailed information on CTCEU's process for analyzing overstay leads.

Figure 6: CTCEU Processing of Overstay Leads from Fiscal Years 2004-2010



Source: GAO analysis of CTCEU data.

Note: Leads do not total 1,373,000 because CTCEU revised its procedures for sending leads for continual monitoring in fiscal year 2009, which resulted in these leads being double-counted in CTCEU's data system as both closed and continually monitored.

⁴⁵CTCEU also searches for overstays using Internet search engines and Web sites such as Bing, Facebook, and Google.

Unreliable Data Hinder DHS Efforts to Identify Overstays and Report Overstay Rate Information to Congress and other Stakeholders

DHS's efforts to identify and report on overstays are hindered by unreliable data. Specifically, we identified four main challenges DHS faces in identifying overstays: (1) incomplete collection of departure data at POEs, (2) Student and Exchange Visitor Information System database limitations, (3) lack of mechanisms for assessing the quality of leads that CTCEU sends to the field offices for investigation, and (4) US-VISIT's backlog in analyzing potential overstay leads.

Unreliable Collection of Departure Data at POEs

Without a comprehensive biometric entry and exit system, DHS relies on biographic information that nonimmigrants provide to CBP when entering and exiting the United States, including information on I-94/I-94W arrival and departure forms. CBP faces two challenges in collecting accurate and complete biographic information from nonimmigrants departing the United States through land POEs. First, CBP requires nonimmigrants leaving the United States through land POEs to remit their I-94/I-94W arrival and departure forms to record their exit if they do not plan to return within 30 days. However, CBP does not inspect travelers exiting the United States through land POEs, including collecting their biometric information, and CBP does not have a consistent mechanism in place at land POEs to provide nonimmigrants with the means to turn in these forms.⁴⁶ Nonimmigrants departing the United States through land POEs turn in their I-94/I-94W forms on their own initiative. According to CBP officials, at some POEs, CBP provides a box for nonimmigrants to drop off their I-94/I-94W forms, while at other POEs departing nonimmigrants may park their cars, enter the POE facility, and provide their forms to a CBP officer. Remitting these forms represents the only method for recording that nonimmigrants left the country if they exit via a land POE. If departing nonimmigrants do not take the initiative to turn in their forms, DHS does not have complete information that the nonimmigrants departed the United States, hindering DHS's efforts to determine whether those nonimmigrants were overstays. Second, CBP faces challenges in ensuring the accuracy of the I-94/I-94W forms that nonimmigrants submit when

⁴⁶While the I-94 is a paper document, CBP collects this form and manually inputs the departure information into the TECS database, after which US-VISIT and CTCEU use the data to determine if nonimmigrants have departed the United States. CBP conducts some outbound inspections at land POEs to search for illegal bulk cash and weapons. For further information, see GAO, *Moving Illegal Proceeds: Challenges Exist in the Federal Government's Effort to Stem Cross Border Currency Smuggling*, [GAO-11-73](#) (Washington, D.C.: Oct. 25, 2010).

departing through land POEs. In particular, at two of three land POEs we visited, CBP officials told us that there have been instances in which an individual other than the person listed on the I-94/I-94W form remitted the form to CBP. In such a case, CBP cannot be sure whether the nonimmigrant listed on the I-94/I-94W form actually departed the United States, as someone else turned in his or her form. As a result of these challenges, DHS faces difficulties in determining whether nonimmigrants have actually departed the United States through land POEs and identifying whether they overstayed their authorized periods of admission.

Internal control standards call for agencies to develop control activities to help ensure that data are completely and accurately recorded.⁴⁷ CBP officials at two land POEs we visited stated that because of the configuration of some land POEs—such as there being only one lane to accommodate all automobile traffic exiting the United States—establishing a mechanism for collecting I-94/I-94W forms at these areas could greatly impede the flow of traffic. The CBP Director for Traveler Entry Programs stated that establishing a national policy for collecting I-94/I-94W forms at land borders could yield benefits, including to help DHS more reliably identify overstays, but would need to be weighed against costs, such as determining the indirect cost for travelers to stop in line to turn in I-94/I-94W forms and the potential impact on Canadian and Mexican border crossing processes, which relate to CBP's current border crossing procedures. This official also noted that the submission of these forms would not ensure the accuracy of the biographical information collected from nonimmigrants departing through land POEs because nonimmigrants could still fraudulently remit I-94/I-94W forms that belong to others. From August 2005 to November 2006, CBP studied the feasibility of using radio frequency technology to record biographic departure information from I-94/I-94W forms at land POEs. Through tests of this technology, CBP determined that it was too immature to meet the requirements of a land exit solution. While CBP studied a technological mechanism for recording biographic departure information at land POEs, CBP officials stated that the agency has not studied the costs and benefits of providing a mechanism for nonimmigrants departing the United States at land POEs to turn in their forms, such as a drop box. In 2006, DHS released a guide to help DHS components conduct cost-benefit analyses to identify the superior financial solution among competing alternatives. This guide identified cost-benefit analyses as a proven management tool for

⁴⁷ [GAO/AIMD-00-21.3.1](#).

managing costs and risks.⁴⁸ By analyzing the costs and benefits of developing a mechanism to provide nonimmigrants departing land POEs with a way to turn in their I-94/I-94W forms, CBP could more effectively determine if doing so presents a viable means for the agency to obtain more complete departure information for identifying overstays for possible investigation.

In addition to these challenges in collecting complete and accurate departure information at land POEs, CBP has faced difficulties in ensuring the accuracy of departure information collected from air and sea POEs. Specifically, regulations require air and sea carriers to submit electronic passenger departure manifests—containing, among other things, the names and other identifying information of passengers—before the airplane or vessel departs from the United States.⁴⁹ The regulations also specify that the carrier collecting the manifest information is responsible for comparing the travel document presented by the passenger with the travel document information it is transmitting to CBP to ensure that the information is correct, the document appears to be valid for travel purposes, and the passenger is the person to whom the document was issued.⁵⁰ However, carriers may elect to verify that a passenger matches the travel document he or she presented at a check-in counter prior to the individual entering the boarding area rather than doing so as passengers board the airplanes or vessels, and CBP does not have a process to perform this verification at boarding. CBP officials told us that, as a result, the current system for verifying air and sea departures is vulnerable to fraud. Specifically, a nonimmigrant could fraudulently make it appear as if he or she departed when in fact the nonimmigrant has not because another individual may have taken his or her place on the outbound plane or vessel. For example, one nonimmigrant could present identification when checking in to board a plane and to go through inspection at an airport's passenger checkpoint. However, once that nonimmigrant has passed the airport's security checkpoint, he or she could exchange a boarding pass with someone else and not board the plane. That

⁴⁸DHS: *Cost-Benefit Analysis Guidebook, Version 2.0* (2006).

⁴⁹19 C.F.R. §§ 122.75a(b), 4.64(b). Carriers are to submit the electronic departure manifest no later than 60 minutes prior to departure for vessels, and for airplanes, either no later than 30 minutes prior to the securing of the aircraft or no later than the securing of the aircraft, depending on the type of electronic transmission system used.

⁵⁰19 C.F.R. §§ 122.75a(d), 4.64(d).

nonimmigrant could then leave the airport and the other person could use the boarding pass to board the plane, thereby making it appear as if the nonimmigrant who did not board the plane departed the United States, potentially posing a homeland security risk. CBP officials stated that they could not estimate how often or if this scenario occurs, but stated that it is a vulnerability. As a result, CBP may not have accurate information on nonimmigrants departing through air and sea POEs, hindering DHS's efforts to reliably identify overstays.

In addition, we have previously reported on weaknesses in DHS processes for collecting departure data, and how these weaknesses impact the determination of overstay rates. The Implementing Recommendations of the 9/11 Commission Act required that DHS certify that a system is in place that can verify the departure of not less than 97 percent of foreign nationals who depart through U.S. airports in order for DHS to expand the VWP.⁵¹ In September 2008, we reported that DHS's methodology for comparing arrivals and departures for the purpose of departure verification would not inform overall or country-specific overstay rates because DHS's methodology did not begin with arrival records to determine if those foreign nationals departed or remained in the United States beyond their authorized periods of admission.⁵² Rather DHS's methodology started with departure records and matched them to arrival records. As a result, DHS's methodology counted overstays who left the country, but did not identify overstays who have not departed the United States and appear to have no intention of leaving. We recommended that DHS explore cost-effective actions necessary to further improve, validate, and test the reliability of overstay data. DHS reported that it is taking steps to improve the accuracy and reliability of the overstay data, by efforts such as continuing to audit carrier performance and work with airlines to improve the accuracy and completeness of data collection.

In addition, to help address these issues with the accuracy and reliability of departure data, DHS has tested biometric methods for positively identifying passengers before they board airplanes. For example, CBP and the Transportation Security Administration within DHS, conducted two test pilots for collecting biometric information from nonimmigrants at two

⁵¹8 U.S.C. § 1187(c)(8).

⁵²GAO, *Visa Waiver Program: Actions Are Needed to Improve Management of the Expansion Process, and to Assess and Mitigate Program Risks*, [GAO-08-967](#) (Washington, D.C.: Sept. 15, 2008).

airports in 2009. Under the CBP pilot, CBP officers collected biometric exit data at departure gates at Detroit Metropolitan Wayne County Airport. Under the Transportation Security Administration pilot, Transportation Security Administration officials collected biometric exit data at security checkpoints at Hartsfield-Jackson Atlanta International Airport. DHS issued an evaluation report on these pilots in October 2009 that, among other findings, reported that the location of officers in the CBP pilot provided a high level of confidence of departure, as all travelers encountered the CBP process and then had to immediately board the aircraft. As a result, they could neither circumvent the process to board the aircraft nor attempt to remain in the United States without raising immediate suspicion. In August 2010, we reported on this evaluation report, noting that the pilot data provided insight into traveler impacts, biometric capture procedures, traveler compliance, and staffing needs, and would support further economic analysis for an air exit solution decision, but that the scope and approach to the pilot tests restricted the pilots' ability to inform a decision for a long-term air exit solution.⁵³ We recommended that DHS identify additional sources for the operational impacts of air exit not addressed in the pilots' evaluation and incorporate these sources into its air exit decision making and planning. DHS concurred with this recommendation and stated that the pilots it conducted would not serve as the sole source of information to inform its decision making.

Limitations with the Student and Exchange Visitor Information System Database

The Student and Exchange Visitor Information System database, which maintains biographical and immigration status information on foreign students and exchange visitors, has two gaps that hinder DHS efforts to identify foreign students or exchange visitors who are out of status for possible investigation. First, according to CTCEU officials, the Student and Exchange Visitor Information System is not an account-based system, meaning that it does not link all of a nonimmigrant's records. For example, a student's activities—including applying to several schools, being dismissed from a school, or transferring to another school—are not linked together, making it difficult for ICE officials to determine a student's complete school enrollment history. Without this history, ICE officials stated that they face challenges determining whether a student has

⁵³ [GAO-10-860](#).

complied with the terms of his or her visa requirements, such as requirements for foreign students to be continually enrolled in a school while in the United States. Second, school officials are responsible for inputting student status information into the Student and Exchange Visitor Information System, and ICE officials stated that school officials may record student biographical information incorrectly or incompletely. For example, ICE officials told us that there have been instances of school officials not inputting a graduation date for a student. In such a case, if the student graduates and no longer meets the requirements for maintaining a student visa status, ICE would not be aware that the student is actually out of status. Further, according to ICE officials, school officials have inputted student information fraudulently into the Student and Exchange Visitor Information System. Specifically, officials from four of the six ICE field offices we visited told us they had initiated student fraud cases, including cases in which schools were knowingly reporting that students were fulfilling their visa requirements, such as maintaining a full course load, when students were not attending the school or only attending intermittently. For example, in 2008 ICE agents from the Los Angeles field office investigated and arrested an English language school operator who, in exchange for cash payments, assisted nonimmigrants to fraudulently obtain student visas and reported them as enrolled in his schools even though they were not attending classes. ICE officials said that the agency does not have the personnel and funding resources necessary to collect and update biographical and educational information directly from the more than 1 million nonimmigrant students, exchange visitors, and their dependents in the Student and Exchange Visitor Information System rather than relying on school officials at each institution to input this information. As a result of these weaknesses, the Student Exchange and Visitor Information System is vulnerable to fraud and data inaccuracies, hindering ICE's efforts to obtain accurate student status information, identify students who may be overstays, and refer viable leads for further investigation by ICE field offices.

According to ICE officials, DHS is developing an updated version of the Student and Exchange Visitor Information System, which is expected to be implemented by the end of fiscal year 2011. Among other improvements, the updated version is to be an account-based system, allowing DHS to better monitor student activity. Further, ICE officials have established a new analysis unit within the CTCEU called the Student and Exchange Visitor Information System Exploitation Section to help address these vulnerabilities by, for example, analyzing Student and Exchange Visitor Information System data and referring school fraud criminal investigation leads to field offices. ICE officials said that because this section is new, it

is too early to tell what effect the new section will have on strengthening efforts to identify student overstays and instances of school fraud.

Assessing the Quality of Overstay Leads

While CTCEU has a method for collecting and tracking overstay leads it sends to the field offices for investigation, CTCEU lacks performance measures for assessing the quality of overstay leads it provides to ICE field offices. CTCEU officials stated that while it does not have performance measures associated with its analyses or identification of overstay leads, the unit developed an internal audit program for assessing its efforts. Under this program, CTCEU supervisors check 1 percent of leads reviewed by CTCEU analysts to determine whether analysts correctly processed leads. Based on its audit program checks, CTCEU reported that from November 2007 through April 2010, the unit found 12 material errors—defined by CTCEU as leads that should have been identified as viable for investigation but were not or conversely should have been identified as not viable but were identified as viable—in analysts’ review and identification of about 2,200 overstay leads. In addition, among the 2,200 overstay leads reviewed, the unit found about 1,700 nonmaterial errors—defined as errors that did not impact whether or not a lead was assigned to a field office for investigation, such as analysts not correctly recording information included in the leads, like nonimmigrants’ identification numbers. This internal audit program can help CTCEU determine the extent to which it is correctly identifying viable overstay leads for investigation, and according to the audit program’s concept document, is intended to help ensure that the CTCEU lead review process functions effectively. However, this program does not help ICE assess the extent to which the leads it identifies as viable for investigation ultimately result in an enforcement outcome, such as arrests. From fiscal years 2004 through 2010, 23 percent of leads investigated by ICE field offices resulted in arrests; the other 77 percent of leads resulted in a finding of departed, in-status, or all leads exhausted. CTCEU officials stated that there are various reasons that leads do not result in an arrest. For example, officials said that databases used to verify leads may not have the most current information, such as a petition for an immigration benefit. ICE officials also stated that it can be difficult to locate overstays in cases when there is not a last known address, as overstays can move to other locations.

Internal control standards require that agencies develop control activities as an integral part of planning, implementing, reviewing, and accountability for stewardship of government resources and achieving effective results. Control activities can include, for example, establishing

and reviewing performance measures and indicators. While CTCEU does not have such performance measures, US-VISIT—which performs a similar function to CTCEU by providing overstay leads for investigation—has established an outcome measure based on the credibility rate of its leads becoming investigative cases. Specifically, US-VISIT measures the percentage of suspected overstay leads it forwards to CTCEU that are currently in the United States and have overstayed their authorized periods of admission, based on the information in the databases US-VISIT checks at the time of its review of those leads. US-VISIT officials stated they have found establishing this performance measure beneficial because it provides them with information that is helpful for improving the quality of its analyses to identify overstay leads. US-VISIT officials also stated that the credibility rate is helpful for training its analysts in areas where consistent errors were made, such as in reviewing refugee and asylee benefits information. CTCEU collects data on the results of its overstay investigations, such as the number of arrests resulting from leads sent to field offices for investigation, but does not use this type of information to assess the quality of its leads because it had not identified doing so as necessary. By using data such as this to assess the quality of its leads against performance measures and monitoring the results of those measures, CTCEU could obtain information to adjust its approach in identifying and assigning leads, thereby strengthening its overall overstay investigative efforts.

Addressing US-VISIT's Backlog of Potential Overstay Records

US-VISIT has a backlog of several hundred thousand unreviewed nonpriority in-country overstay leads, which could impede US-VISIT's efforts to identify possible overstay leads for CTCEU to investigate. At the end of fiscal year 2009, US-VISIT reported a total backlog of about 959,000 in-country overstay leads, and program officials attributed this backlog to resource constraints and US-VISIT's focus on reviewing leads that meet ICE's investigative priorities.⁵⁴ The conference report accompanying the fiscal year 2010 Department of Homeland Security Appropriations Act noted congressional concerns regarding this backlog, stating that the backlog in overstay records was troubling and represented a major

⁵⁴Since the backlogged leads have not undergone review by US-VISIT or CTCEU, it can be expected that many of the leads would be closed during the automatic and manual review processes performed by these agencies and thus may not represent overstays. In addition, any nonpriority leads would be forwarded by CTCEU to ERO.

vulnerability.⁵⁵ In response to this concern, DHS reprogrammed \$5 million from fiscal year 2009 to help address these backlogged leads, and US-VISIT officials reported processing approximately 587,000 of the backlogged leads in fiscal year 2010. However, as of January 2011, US-VISIT computer systems identified having a backlog of 1.6 million potential overstay records. According to US-VISIT officials, the 1.6 million potential overstay records include prior nonpriority overstay leads that have not yet been reviewed, nonpriority leads that continue to accrue on a daily basis, and leads generated in error as a result of CBP system changes. Specifically, CBP system changes resulted in multiple arrival or departure records being inadvertently created for a single individual. US-VISIT officials stated that they are currently in the process of addressing the impact of these CBP system changes by working with CBP to prevent multiple records from inadvertently being created in the Arrival and Departure Information System, which can subsequently cause some overstay leads to be generated in error. As of December 2010, US-VISIT was considering ways to improve the efficiency of its current operations so that it can process the remaining backlogged leads once its reprogrammed funds are fully expended by, for example, increasing the required number of leads contractors review. However, according to US-VISIT officials, as of February 2011, the unit had spent \$3.7 million of the \$5 million in reprogrammed funds and would not be able to prevent further backlogged leads from accumulating without additional resources.

These four challenges—unreliable collection of departure data at POEs, Student and Exchange Visitor Information System database limitations, lack of mechanisms for assessing the quality of leads that CTCEU sends to the field offices for investigation, and US-VISIT's backlog in analyzing potential overstay leads—hinder DHS's efforts to identify possible overstays in the United States for investigation by ICE. They also impede DHS from annually reporting overstay estimates and overstay rates, as required by statute. Specifically, by statute, DHS is required to submit an annual report to Congress providing numerical estimates of the number of aliens from each country in each nonimmigrant classification who overstayed an authorized period of admission that expired during the fiscal year prior to the year for which the report is made.⁵⁶ DHS officials stated that the department has not provided Congress annual overstay estimates regularly since 1994 because officials do not have sufficient

⁵⁵H.R. Rep. No. 111-157, at 101 (2009).

⁵⁶8 U.S.C. § 1376(b).

confidence in the quality of the department's overstay data—which is maintained and generated by US-VISIT. As a result, DHS officials stated that the department cannot reliably report overstay rates in accordance with the statute. Further, by statute DHS is to determine a disqualification rate for each country that participated in the VWP during the previous fiscal year—that is the percentage of a VWP country's nationals who applied for admission under the program during the previous fiscal year who were denied admission at the time of arrival (including those allowed to withdraw their application for admission at the POE or violated the terms of their admission, which would include overstaying the 90-day period of admission.⁵⁷ According to statute, if DHS determines that a VWP country's disqualification rate is between 2 and 3.5 percent, the country is to be placed in probationary status for no more than two full fiscal years, with termination as a program country to follow if the rate continues to be 2 percent or more. If DHS determines that the disqualification rate is 3.5 percent or more, the country's designation as a VWP country is to be terminated at the beginning of the second fiscal year following the fiscal year in which the determination is made.⁵⁸ Because DHS is not reporting overstay rates for countries participating in the VWP, decision makers do not have complete information for determining policy for probation or removal of countries from the program. In September 2008, we recommended, among other things, that the Secretary of Homeland Security designate an office with responsibility for developing overstay rate information for the purpose of monitoring countries' compliance with the statutory requirements of the VWP, and direct that office and other DHS components to explore cost-effective actions to further improve the reliability of overstay data.⁵⁹ DHS stated that it was taking steps to implement these recommendations through actions such as working with airlines to improve the completeness of data collection.

⁵⁷8 U.S.C. § 1187(c)(3)(A), (f).

⁵⁸There is an exception to this termination provision if the total number of nationals from that country who were denied (or withdrew their application for) admission or violated the terms of their admission was 100 or less.

⁵⁹[GAO-08-967](#).

Broadening the Scope of Electronic Lookouts in Federal Information Systems Could Enhance Overstay Information Sharing

DHS Uses Various Mechanisms and Alerts to Provide Overstay Information to Federal, State, and Local Agencies

DHS has established a variety of mechanisms to share immigration information—including information pertaining to overstay—among its component entities and with other federal, state, and local agencies. We have previously reported on the importance of effectively sharing information between different agencies and across levels of government, and in 2008 DHS acknowledged that the department continued to face barriers in this area.⁶⁰ Responsibility for administering and enforcing the nation's immigration policies is divided between various components within DHS and across the federal government, and state and local law enforcement agencies can request immigration status information from ICE on nonimmigrants they encounter, including whether those nonimmigrants are overstay.

DHS has taken several steps to provide its component entities and other federal agencies with information to identify and take enforcement action on overstay. Whereas some of these mechanisms are designed specifically to share overstay information, other mechanisms are broader in scope but also communicate information that can be used to support federal overstay identification and enforcement efforts. Table 4 provides information about these information sharing activities.

⁶⁰See, for example, GAO, *Information Sharing: Practices That Can Benefit Critical Infrastructure Protection*, [GAO-02-24](#) (Washington, D.C.: Oct. 15, 2001); *Information Sharing: Federal Agencies Are Sharing Border and Terrorism Information with Local and Tribal Law Enforcement Agencies, but Additional Efforts Are Needed*, [GAO-10-41](#) (Washington, D.C.: Dec. 18, 2009); *Information Sharing: DHS Could Better Define How It Plans to Meet Its State and Local Mission and Improve Performance Accountability*, [GAO-11-223](#) (Washington, D.C.: Dec. 16, 2010); and Department of Homeland Security, *Department of Homeland Security Information Sharing Strategy* (Washington, D.C., 2008).

Table 4: Primary DHS Information Sharing Activities that Contribute to Federal Overstay Enforcement Actions

Activity description	Contribution to overstay efforts	Responsible DHS entity	Primary users of information ^a
Biometric and biographic lookouts on the records of overstay subjects are recorded in the Automated Biometric Identification System and TECS, respectively. ^b	Overstay lookouts alert officials if a nonimmigrant has previously overstayed or is the subject of an ICE investigation. Subsequently, officials may deny entry or refuse to issue a visa or grant an immigration benefit to the nonimmigrant due to the overstay violation.	US-VISIT creates lookouts for out-of-country overstay records generated by the Arrival and Departure Information System. CBP creates lookouts for overstay violators encountered at POEs. CTCEU creates lookouts for the subjects of its overstay investigations.	CBP, State Department, and USCIS.
Arrival and departure information about foreign citizens who travel to the United States is shared through the Arrival and Departure Information System.	Using Arrival and Departure Information System records, federal agencies can determine if a foreign national has overstayed beyond his or her authorized period of admission.	US-VISIT	CBP, ICE, State Department, and USCIS.
USCIS uses various electronic data systems to share information about a nonimmigrant's immigration status and the results of applications to change status or extend nonimmigrant stays. ^c	Federal agencies use information provided by USCIS to help determine the immigration status of suspected overstay violators.	USCIS	CBP, ICE, State Department, and US-VISIT.
ICE field offices share information about their overstay investigations to support deconfliction efforts. ^d	ICE may share information about overstays who are also subjects of separate federal, state, or local investigations. Sharing this information helps to prevent ICE agents from coming into conflict with law enforcement actions being taken or considered by another agency targeting the same nonimmigrants.	ICE	Federal, state, and local agencies participating in the same deconfliction activities as the field office.
ICE Law Enforcement Support Center, among other duties, responds to queries for immigration status information.	In response to a query regarding a nonimmigrant's immigration status, the Law Enforcement Support Center informs federal, state, and local law enforcement agencies if the nonimmigrant appears to have overstayed his or her authorized period of admission based on available arrival and departure records. ^e	ICE	Federal, state, and local law enforcement agencies.

Source: GAO analysis of DHS information.

^aAlthough numerous federal agencies may have access to the shared information presented in this table, CBP, ICE, USCIS, and the State Department are the primary federal agencies with authority to use this information to take action directly based on overstay violations.

^bBiometric and biographic lookouts are electronic alerts that are linked to a subject's record in the Automated Biometric Identification System and TECS and automatically appear when the subject's information is run through these databases in the future.

^eAccording to USCIS officials, the Central Index System, Computer-Linked Application Information Management System 3, and Computer-Linked Application Information Management System 4 are the primary USCIS data systems other agencies access for information about an alien's immigration status.

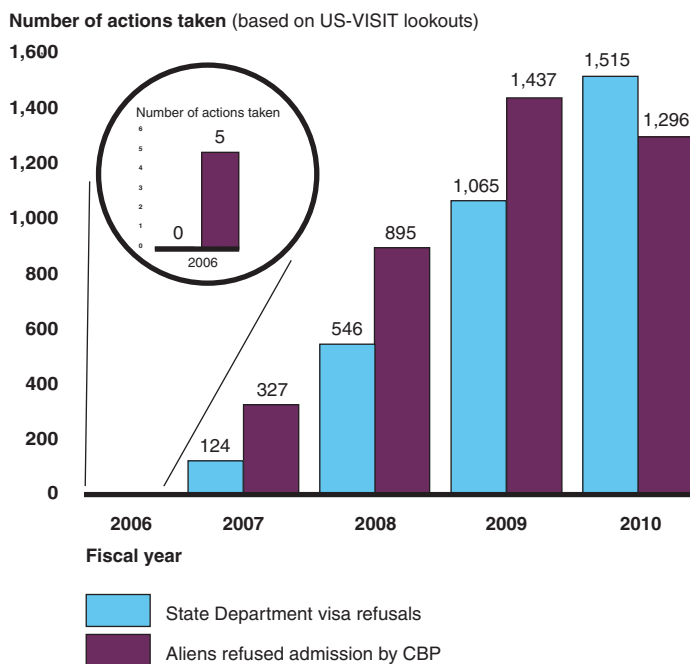
^fExamples of ICE's deconfliction activities include participating in task forces, coordinating with fusion centers, and sharing basic information about the targets of investigations in regional law enforcement information systems.

^gOnce the Law Enforcement Support Center has provided its response to the requesting law enforcement agency, the local ICE field office is responsible for conducting any follow-up work required to make a final status determination and, if necessary, taking the appropriate immigration enforcement action against the nonimmigrant.

With regard to the use of biometric and biographic lookouts, US-VISIT's efforts to share information about out-of-country overstays have contributed to State Department and CBP actions to deny out-of-country overstays new visas and prevent their return to the United States. In particular, since fiscal year 2006, US-VISIT reported that the State Department has refused 3,250 visa applications from applicants who had overstay lookouts created by US-VISIT, and CBP has refused admission to 3,960 overstay violators applying for admission to the United States at POEs who had US-VISIT overstay lookouts on their records.⁶¹ Furthermore, as shown in figure 7, the number of applicants who had US-VISIT overstay lookouts on their records who were refused a visa or POE admission has generally increased each fiscal year since 2006. US-VISIT officials attributed this increase to the fact that the cumulative number of lookouts is increasing as new lookouts are created, thus expanding the population of overstays that could potentially be caught each year as a result of overstay lookouts.

⁶¹US-VISIT did not begin to process out-of-country overstay leads until August 2005. As a result, there are no data available for actions taken by the Department of State and CBP based on US-VISIT overstay lookouts in fiscal years 2004 or 2005.

Figure 7: State Department Visa Refusals and CBP Admission Refusals on Records with US-VISIT Overstay Lookouts from Fiscal Years 2006-2010



Source: GAO analysis of US-VISIT data.

Expanding the Scope of Overstay Lookouts Could Improve CBP's Efforts to Identify Overstays Attempting to Return to the United States

Electronic lookouts are one of the primary mechanisms DHS uses to share information about out-of-country overstays, but the current scope of the population to which these lookouts are assigned does not include certain categories of overstays, such as those who overstay by less than 90 days. We have previously reported on the importance of information sharing in a variety of contexts, and internal control standards call for agencies to communicate pertinent information to internal and external stakeholders so that people can perform their duties efficiently.⁶² Similarly, DHS has identified fostering information sharing as a core mission of the department, and in 2007 the Secretary of DHS issued a memorandum emphasizing that DHS personnel must have timely access to all relevant

⁶²See [GAO-02-24](#), [GAO-10-41](#), [GAO-11-223](#), and [GAO/AIMD-00-21.3.1](#).

information they need to perform their duties.⁶³ Biometric and biographic overstay lookouts immediately alert CBP's primary inspection officers at POEs—who generally have approximately 2 to 3 minutes to make admissions decisions—of a nonimmigrant's history as an overstay violator, at which point the officer can refer the nonimmigrant to secondary inspection for a more in-depth review of the alien's record and admissibility. Although CBP can, and does, identify overstays without lookouts through other means during the inspection process—including interviewing the subject and reviewing arrival and departure data in information systems or in the subject's passport—CBP officials stated that overstay lookouts reduce the risk that overstays could be missed during the inspection process. Furthermore, in its fiscal year 2011 budget request, DHS credited the use of overstay lookouts as helping to increase the number of adverse actions taken against overstays at POEs and overseas consular offices. However, DHS does not create lookouts for the following two categories of overstays: (1) temporary visitors who were admitted to the United States using nonimmigrant business and pleasure visas and subsequently overstayed by 90 days or less; and (2) suspected in-country overstays who CTCEU deems not to be a priority for investigation in terms of being most likely to pose a threat to national security or public safety.

US-VISIT is the primary entity responsible for creating biometric and biographic lookouts for suspected out-of-country overstays who were admitted to the United States using nonimmigrant business and pleasure visas.⁶⁴ According to US-VISIT officials, the decision to focus US-VISIT's efforts on nonimmigrants who overstayed their authorized period of admission under these visas by greater than 90 days was reached in accordance with its customers—CBP and the State Department—in 2006 in order to focus lookout creation on more egregious overstay violators. Specifically, CBP officials stated that 90 days was selected as the threshold for lookout creation based on the agency's sense that nonimmigrants suspected of overstaying by more than 90 days were more likely to eventually be confirmed as overstays than nonimmigrants whose arrival and departure records indicated they had overstayed by 90 days or less.

⁶³See Department of Homeland Security, *Department of Homeland Security Information Sharing Strategy* (Washington, D.C., 2008); and the DHS Secretary's February 1, 2007, *Memorandum to All Department of Homeland Security Components* titled "DHS Policy for Internal Information Exchange and Sharing."

⁶⁴US-VISIT also creates lookouts for suspected out-of-country overstays who were admitted to the United States under the VWP and overstayed by 7 or more days.

Consequently, US-VISIT does not review the records of, nor create overstay lookouts for, nonimmigrants who were admitted to the country using business and pleasure visas and subsequently overstayed by 90 days or less. According to US-VISIT, a total of 570 nonimmigrant records fell into this category of overstays in fiscal years 2007 through 2010 and were not subject to review by US-VISIT for lookout creation.⁶⁵ Although U.S. law does not automatically bar aliens who overstayed their authorized period of admission by 90 days or less from returning to the United States, their ability to be admitted on a subsequent visit to the United States is up to the discretion of CBP. As of January 2011, US-VISIT, CBP, and State Department officials reported that there have been no discussions between their agencies about revising the 90-day threshold for creating overstay lookouts since the original decision to establish this parameter was reached in 2006. According to US-VISIT officials, if the decision was made to do so, reviewing new records from this particular category of out-of-country overstays would be expected to result in a small increase in the number of overstay records US-VISIT would be responsible for reviewing each day. For example, incorporating the fiscal year 2010 out-of-country overstay records of 90 days or less from this nonimmigrant visa class would have resulted in US-VISIT reviewing approximately one additional overstay record each day.

In addition to this category of aliens who overstayed by 90 days or less before departing, other categories of suspected in-country overstays also do not have lookouts assigned to their records. Specifically, neither CTCEU nor US-VISIT posts lookouts for nonimmigrants who are identified as suspected in-country overstays but who CTCEU deems not to be a priority for investigation in terms of being most likely to pose a threat to national security or public safety. CTCEU forwards these nonpriority leads to ERO, and according to CTCEU officials the decision not to create lookouts for these suspected overstays stems from concerns about the amount of resources and time that would be required to create and maintain the lookouts, as well as to respond to inquiries about the

⁶⁵Based on the results of US-VISIT's automated and manual review of other types of overstay records—in which approximately 61 percent of the records received are subsequently closed without being forwarded to ICE or having a lookout created—it can be expected that some of the 570 short-term overstay records would also be closed without having a lookout created were they to undergo the standard automated and manual review processes US-VISIT employs for other overstay records.

lookouts from other DHS components (e.g., CBP).⁶⁶ Alternatively, US-VISIT officials reported that US-VISIT could potentially create lookouts for the nonpriority overstay leads that it sends to CTCEU, many of which are subsequently included in the leads forwarded to ERO. However, the officials said that US-VISIT would need additional personnel in order to be able to also create lookouts for these records. In the meantime, if the subjects of the leads that CTCEU currently sends to ERO depart the United States via an air or sea POE, their departure would be recorded in the Arrival and Departure Information System and transmitted to US-VISIT, which would then be responsible for creating out-of-country overstay lookouts for the aliens. Conversely, if any of these nonimmigrants depart the country by land and do not turn in their I-94/I-94W form to record their departure, US-VISIT would not receive their record from the Arrival and Departure Information System as a potential new out-of-country overstay. As a result, if these nonimmigrants try to apply for a new visa or for admission to the country in the future, they would not have overstay lookouts on their records to help alert the State Department or CBP officials about their previous violation. Nevertheless, it is still possible that the State Department and CBP could determine that these nonimmigrants had previously overstayed their authorized periods of admission by, for example, conducting database searches before determining whether to issue new visas or allow the nonimmigrants into the United States.

CBP Office of Field Operations officials reported that having lookouts created for out-of-country visa overstay violations of 90 days or less and for in-country overstay leads that are sent to ERO could help CBP officers more effectively identify these overstay violators during any future attempts to gain admission to the United States. Similarly, officials from 9 of 12 POEs we visited reported that it would be beneficial to have lookouts created for these categories of overstays, and officials from two of the other POEs we visited stated that creating these lookouts could potentially be beneficial depending on the extent to which they contain detailed information about the factors that establish that the aliens are overstays. Nevertheless, although the CBP Office of Field Operations officials we spoke with expressed interest in having lookouts created for these categories of overstays, they stated that any decision to create these

⁶⁶ CTCEU sent about 279,000 nonpriority leads to ERO from fiscal year 2004 through fiscal year 2010. Additionally, US-VISIT's backlog of unreviewed nonpriority leads also contains an unknown number of leads that, if they were to be reviewed and deemed to be valid, would potentially be forwarded to ERO in the same manner as other nonpriority leads.

lookouts would also need to be weighed against potential costs that may be involved. For example, in the case of lookouts for non-VWP overstays of less than 90 days, there may be a risk that travelers could unnecessarily be referred to secondary inspection only to have CBP discover that they had a legitimate reason to overstay by a few days.⁶⁷ Likewise, in the case of in-country overstay leads that are sent to ERO, since these leads are not manually reviewed by CTCEU, there is an increased likelihood that lookouts based on these leads could be inaccurate, which could result in travelers unnecessarily being referred to secondary inspection. State Department officials we spoke with were unsure of the extent to which creating lookouts for these categories of overstays could provide added value to its visa adjudication process, and stated they would need to communicate with DHS about the potential benefits and costs associated with taking this step in order to determine if it would be beneficial.

Being aware that an alien has previously committed an overstay violation is necessary if CBP is to accurately determine whether or not the violator should be re-admitted to the United States. Creating lookouts for these additional categories of overstays would help to alert CBP to these aliens' overstay history, thereby better positioning the agency to accurately identify these aliens as overstays and to incorporate this information into future admissibility decisions involving these nonimmigrants. For example, CBP officials at two POEs we visited stated that creating lookouts for these two categories of overstays would provide another layer of security in targeting overstays and would help to lessen the burden on primary inspection officers attempting to identify overstays seeking to gain admission to the country. Furthermore, to the extent these expanded lookouts help CBP identify overstays encountered at POEs, the lookouts could also help improve CBP's ability to take enforcement action against these overstays, including denying them the opportunity to be admitted to the country and to overstay again. Additionally, officials from three POEs we visited reported that including these overstays on US-VISIT's biometric watch list would help CBP inspection officers positively identify overstays regardless of any efforts taken by the aliens to conceal their violations, such as through the use of fraudulent documents or backdated passport stamps. Although CBP Office of Field Operations officials told us that creating lookouts for these categories of overstays

⁶⁷Examples of legitimate reasons that may cause a foreign traveler to overstay could include situations such as the recent volcanic eruption in Iceland that grounded many international flights.

CBP Inspection Officers Face Challenges in Obtaining Information from USCIS to Address Overstays, but USCIS Has Long-Term Plans to Help Address These Challenges

would likely be beneficial and could help to reduce the risk that overstays could be missed during inspections, they acknowledged that expanding the scope of overstay lookouts in this manner could also produce unintended costs, such as nonimmigrants being unnecessarily referred to secondary inspection. According to these officials, CBP has not performed an assessment to determine if the benefits of creating these new lookouts would outweigh the potential costs, nor does the agency have plans to conduct this type of assessment. Conducting such an assessment could help CBP determine the benefits that could be gained from the creation of lookouts for these categories of overstays relative to the costs, such as the use of additional resources, which could result from creating the lookouts.

USCIS provides immigration status information to federal agencies responsible for identifying and addressing overstays, but CBP officials from 9 of 12 POEs we visited reported facing challenges on some occasions obtaining information from USCIS. The ability to access USCIS's information about pending or authorized changes to nonimmigrants' status or the length of their stay in the United States is particularly important to agencies seeking to identify and address overstays, and can alter their determination of whether an alien has committed an overstay violation. For example, if USCIS approves a change of status or extension of stay for a nonimmigrant, the alien may be authorized to remain in the country beyond his or her original period of admission without qualifying as an overstay. Likewise, nonimmigrants who have submitted a timely application to change their status or extend their stay do not accrue unlawful presence while their application is pending, and can be allowed to remain in the United States beyond their original period of admission until their case has been adjudicated by USCIS. As a result, even in instances where an alien's arrival and departure dates indicate that an overstay violation has occurred, checking the alien's record with USCIS may show that the alien was authorized to remain in the United States beyond his or her original period of admission.

Given the importance of this information for correctly identifying overstays, being able to access timely, current, and accurate information from USCIS about an alien's immigration status and applications for immigration benefits is important for federal agencies conducting overstay enforcement activities. USCIS has identified ineffective information sharing with its government partners as one of the agency's challenges, and has previously acknowledged that information it shares with other agencies is sometimes difficult to obtain, incomplete, or not current. In order to help share information with other agencies, USCIS has granted several agencies—including CBP, ICE, the State Department, and officials

from US-VISIT—access to select USCIS databases to allow these agencies to search for and view various immigration records, such as nonimmigrant applications for extensions of stay or changes of status. In particular, USCIS officials identified the Computer-Linked Application Information Management System 3 and the Central Index System as the primary USCIS databases containing information relevant to identifying overstays.⁶⁸ Also, in 2007 USCIS deployed the Person Centric Query Service, which helps to streamline the process of searching for information in USCIS's databases by enabling users to search multiple databases with a single query.

However, officials we interviewed at CBP, ICE, and the State Department reported overall mixed views about their ability to obtain information from USCIS in order to make timely and accurate immigration status determinations. Although officials from the State Department and the ICE field offices we visited did not generally raise concerns about their ability to obtain information from USCIS for the purpose of taking enforcement action against overstays, CBP officials at some of the POEs we visited reported experiencing challenges on some occasions with obtaining the information they need from USCIS for the purpose of identifying overstays encountered at POEs. In particular, officials at 9 of the 12 POEs described challenges they have encountered in trying to search for and locate records in USCIS's databases, and officials at 5 of the 12 POEs described instances where it has been challenging to contact USCIS directly for assistance with questions about an alien's immigration status or to obtain information maintained in the alien's A-File. According to CBP officials, in instances where CBP officers are unable to obtain, or are otherwise delayed in receiving the information they need from USCIS to determine the admissibility of a suspected overstay, CBP officials may find it

⁶⁸The Computer-Linked Application Information Management System 3 database supports the adjudication of all USCIS immigration benefits other than naturalization and humanitarian immigration benefits (refugees, asylees, and parolees). The Central Index System database serves as a DHS-wide index used to track the location of paper case files (known as Alien Files or A-Files). Although the Central Index System also maintains some immigration status information about individuals, the Computer-Linked Application Information Management System 3 contains additional information about particular cases.

necessary to defer the alien's inspection or make an admission decision based only on the information available to them at the time.⁶⁹

Despite USCIS having an electronic information sharing infrastructure in place, several challenges prevent CBP officials from being able to obtain all of the information they need from USCIS by searching its electronic databases alone. In particular, USCIS's operating processes are paper based, which can result in some application and other case information not being captured electronically, and thus not being available to officials from other agencies searching USCIS's databases. According to USCIS officials we interviewed, the extent to which application information is captured electronically in the agency's databases varies between different types of benefit applications. Whereas some forms contain a limited number of fields that are not available to be viewed electronically, there are other types of applications—such as Form I-290B, which is used to appeal USCIS adjudication decisions—for which the entire application form is not captured electronically and can only be viewed in hard copy.

Additionally, USCIS officials stated that the Computer-Linked Application Information Management System 3 can be a difficult system for users from outside of the agency to navigate, and they stated that in some cases external users may not know how to effectively use the system to locate information. For example, USCIS's systems are event-based rather than account-based, which, according to USCIS officials, can result in different records about the same nonimmigrant (e.g., from multiple applications) not being automatically linked together in USCIS's databases. Consequently, external officials may have to run several queries to assemble all information for a nonimmigrant, and if any of the nonimmigrant's records are not located during this process the requesting entity may not have access to all of the information needed to make an accurate immigration enforcement decision. Although USCIS officials told us that the introduction of the Person Centric Query Service in recent years has helped to improve the ability of external users to search for information in USCIS's databases, USCIS does not consider this capability to be a final solution to its information sharing challenges. Instead, in

⁶⁹Deferred inspections are used when an immediate decision concerning the immigration status of an arriving alien cannot be made at the POE and there is reason to believe that, if the alien is allowed to enter the United States and inspected at a later date, the alien can overcome a finding of inadmissibility (e.g., based on a suspected overstay violation) with the provision of additional information or documentation that is not available at the time and place of the initial examination.

order to address these and other challenges, in 2007 USCIS initiated a project to transform its operating processes and data systems.

Among other things, the USCIS Transformation Program is designed to help the agency move away from its current paper-based process to an electronic environment, and it is expected to result in the development of a new information system that will eventually replace the Computer-Linked Application Information Management System. USCIS plans to begin implementing portions of the new information system in late 2011, and estimates that full implementation of the Transformation Program will be completed by fiscal year 2014. Although USCIS expects the Transformation Program to improve its ability to share information with other agencies, it is too early to tell what impact the program will have on strengthening CBP's ability to obtain information from USCIS regarding nonimmigrants' immigration status or applications for changes in status or other benefits. We have ongoing work assessing USCIS's transformation efforts for the House Committee on the Judiciary and the Senate Committee on Homeland Security and Governmental Affairs, and plan to report on these efforts later this year.

Conclusions

Identifying and taking enforcement action to address the estimated 4 million to 5.5 million foreign visitors who are estimated to have entered the United States legally but then overstayed is a daunting task. Given the government's finite resources for addressing overstays, competing priorities, and the magnitude of the estimated overstay population, it is particularly important that DHS overstay enforcement programs utilize leading program management practices to plan and execute overstay programs and effectively assess program results so that corrective actions can be taken if necessary. By establishing a time frame for assessing the funding and resources ERO would require to assume some responsibility for enforcement of civil nonpriority overstay violators and utilizing assessment findings, as appropriate, ICE could strengthen its planning efforts for executing its overstay enforcement activities moving forward. In addition, by establishing mechanisms to measure the outcomes of programs intended to address overstays in accordance with leading practices for performance management, CTCEU program managers could have more specific information with which to make informed decisions as to what program adjustments might be necessary, if any, to maximize program effectiveness.

Identifying overstays is challenging, particularly given that, in the absence of biometric departure data, DHS must rely on biographic information to

do so. As DHS's ability to accurately identify overstays is largely dependent on the quality of the alien arrival and departure data CBP collects, it is important that CBP take steps to ensure these data are as reliable as possible. By establishing a mechanism to collect biographic I-94/I-94W exit documentation at land POEs to the extent that benefits outweigh costs, CBP could better ensure the completeness of alien departure data. Also, the reliability of leads sent to field offices is important because ICE has limited resources to investigate a large population of overstays. By developing and using performance measures to assess the quality of overstay leads, CTCEU's process for validating leads could improve and commensurately focus ICE field office resources on more promising overstay investigations. DHS's ability to share information between the many governmental entities involved in administering the nation's immigration laws also has an impact on the effectiveness of its efforts to identify and take enforcement action against overstays. Although the department has established various mechanisms to share immigration information, expanding the scope of overstay lookouts could improve CBP's ability to identify overstays during the inspection process, and by extension, better position it to take enforcement action to address overstay violators attempting to re-enter the United States.

Recommendations for Executive Action

To help ICE's execution of overstay enforcement efforts; and improve assessment of ICE programs that identify and address overstays so that program adjustments can be made, if necessary; we recommend that the Assistant Secretary of Immigration and Customs Enforcement take the following three actions:

- establish a target time frame for assessing the funding and resources ERO would require in order to assume responsibility for civil overstay enforcement and use the results of that assessment;
- develop outcome-based performance measures—or proxy measures if program outcomes cannot be captured—and associated targets on CTCEU's progress in preventing terrorists and other criminals from exploiting the nation's immigration system; and
- develop a performance measure for assessing the quality of leads CTCEU assigns to ICE field offices for investigations, using performance information already collected by CTCEU.

To increase the completeness of exit information available for the purpose of identifying overstays, we recommend that the Commissioner of Customs and Border Protection analyze the costs and benefits of developing a standard mechanism for collecting I-94/I-94W forms at land

POEs, and develop a standard mechanism to collect these forms, to the extent that benefits outweigh the costs.

To improve information sharing in support of efforts to identify and take enforcement action against overstay, we recommend that the Secretary of Homeland Security direct the Commissioner of Customs and Border Protection, the Under Secretary of the National Protection and Programs Directorate, and the Assistant Secretary of Immigration and Customs Enforcement to assess the costs and benefits of creating biometric and biographic lookouts for (1) out-of-country overstay of 90 days or less who entered the country using nonimmigrant business and pleasure visas, and (2) in-country overstay leads sent to ERO, and create these lookouts, to the extent that the benefits of doing so outweigh the costs.

Agency Comments and Our Evaluation

We provided a draft of this report to DHS and the State Department for their review and comment. On April 11, 2011, we received written comments on the draft report from DHS, which are reproduced in full in appendix III. DHS concurred with our five recommendations and described actions under way or planned to address them. DHS also provided technical comments, which we incorporated as appropriate.

With regard to our first recommendation that ICE establish a target time frame for assessing the funding and resources ERO would require in order to assume responsibility for civil overstay enforcement and use the results of that assessment, DHS stated that ICE is in the process of planning for ERO to assume this responsibility. Specifically, DHS stated that ICE will identify the resources needed to transition this responsibility to ERO as part of the Fiscal Year 2013 Resource Allocation Plan. We believe that setting a target time for completing funding and resource assessment efforts would help ICE hold its staff accountable for completing these efforts. With regard to our second recommendation that ICE develop outcome-based performance measures or proxy measures and associated targets for assessing CTCEU's progress in preventing exploitation of the nation's immigration system, DHS stated that ICE plans to consult with DHS's national security partners to determine if proxy measures can be implemented. Establishing performance measures or proxy measures should help strengthen ICE's overstay enforcement efforts and assessment of ICE programs that identify and address overstay.

With regard to our third recommendation that ICE develop a performance measure for assessing the quality of leads CTCEU assigns to ICE field offices for investigations, DHS stated that, while the department

concurred with the recommendation, CTCEU disagreed with our assessment that the metric it uses to assess the quality of overstay leads—a sampling of 1 percent of daily leads to correct deficient information and determine if additional training is needed to correct repetitive errors—is not sufficient to assess the quality of leads. CTCEU stated that one of the challenges to developing a metric is that it has to rely on information from other DHS components to formulate leads, and when that information becomes more reliable and accurate, CTCEU's leads should also become more reliable. While we recognize that CTCEU relies on data from various components to conduct its work and that the quality of its leads is impacted by the quality of data it uses to formulate them, we continue to believe that CTCEU could benefit from using information that it already collects through its sampling process to assess the quality of its leads against performance measures and monitoring the results of those measures. Through such assessment and monitoring, we believe CTCEU could obtain information to adjust its approach in identifying and assigning leads, as needed, to strengthen its overall overstay enforcement efforts.

To address our fourth recommendation, that CBP analyze the costs and benefits of developing a standard mechanism for collecting I-94/I-94W forms at land POEs, CBP proposed the completion of a cost effective independent evaluation. CBP also noted that different operating environments may render a standard mechanism for collecting I-94/I-94W forms inefficient. We recognize that different operating environments can effect the efficient collection of these forms, as we have reported, and believe this would be an important consideration in such an evaluation. Finally, DHS stated that in response to our fifth recommendation to assess the costs and benefits of creating biometric and biographic lookouts for out-of-country overstays of 90 days or less and in-country overstay leads sent to ERO, that ICE, CBP, and the National Protection and Programs Directorate will work together to assess the costs and benefits of creating lookouts for these categories of overstays, and that the results of this assessment will be used to determine the feasibility of additional program costs.

The State Department did not have formal comments on our draft report, but provided technical comments, which we incorporated as appropriate.

As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies of this report to the Secretaries of Homeland Security and State, selected congressional

committees, and other interested parties. In addition, the report will be available at no charge on the GAO Web site at <http://www.gao.gov>.

If you or your staff have any questions concerning this report, please contact me at (202) 512-8777, or StanaR@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors are listed in appendix IV.

A handwritten signature in black ink that reads "Richard M. Stana". The signature is written in a cursive, flowing style.

Richard M. Stana
Director, Homeland Security and Justice Issues

Appendix I: Scope and Methodology

To determine the extent to which federal agencies take actions to address overstay, we analyzed program documentation, collected data, and interviewed officials from the Department of Homeland Security (DHS) and its components, including U.S. Immigration and Customs Enforcement (ICE); U.S. Customs and Border Protection (CBP); U.S. Citizenship and Immigration Services (USCIS); and the United States Visitor and Immigrant Status Indicator Technology program (US-VISIT); and the State Department. In particular, we analyzed ICE documentation, such as standard operating procedures, memos, and guidance for investigations, to determine the goals, programs, processes, and systems ICE has established for the purpose of taking enforcement action against suspected overstay located within the United States. We also interviewed ICE officials from the Counterterrorism and Criminal Exploitation Unit (CTCEU) and Enforcement and Removal Operations (ERO) headquarters, and conducted site visits to six ICE Homeland Security Investigations Special Agent in Charge field offices (located in Seattle, Washington; Los Angeles, California; San Diego, California; Miami, Florida; New York, New York; and Newark, New Jersey).¹ We selected these locations based on (1) the range in the number of overstay investigations completed by the offices from fiscal year 2004 through fiscal year 2010; (2) the offices' geographic location; and (3) the offices' proximity to CBP ports of entry (POE) we visited.² While the information we obtained from officials at these locations cannot be generalized across all 26 Special Agent in Charge field offices, the visits provided us with the perspectives of ICE officials responsible for conducting overstay investigations, including their views on the processes ICE has established for conducting and overseeing these investigations and any challenges they have faced in investigating overstay cases. We also assessed the extent to which CTCEU's program practices were consistent with standard practices for program management and *GAO's Standards for Internal Control in the Federal Government*.³

¹During our site visit to the Newark, New Jersey Homeland Security Investigations field office, we also conducted a separate interview with officials from the ERO field office located nearby.

²We selected this period because CTCEU, formerly called the Compliance Enforcement Unit, was established by ICE in 2003 and fiscal year 2004 is the first year for which completed overstay investigations data are available.

³See, for example, [GAO/AIMD-00-21.3.1](#) and the Project Management Institute's *The Standard for Program Management* © (2006).

Further, we obtained and analyzed data from ICE's system for tracking overstay leads on the results of CTCEU's overstay investigations from fiscal year 2004 through fiscal year 2010.⁴ In addition, we determined the extent to which Homeland Security Investigations dedicates investigative resources to overstay investigations by analyzing data on investigative hours by case category for fiscal years 2006 through 2010.⁵ We assessed the reliability of these data by (1) reviewing existing documentation and documentation we collected on the controls in the systems and the policies for ensuring data reliability; and (2) interviewing agency officials who are familiar with the source of the data and internal controls built into ICE's systems, as well as the quality assurance steps performed after data are entered into the systems. We determined that the data were sufficiently reliable for the purposes of our report.

Moreover, we analyzed documentation, such as field office manuals and program memos, regarding enforcement actions taken by CBP and the State Department against out-of-country overstays attempting to be admitted to the United States or apply for a new visa. We also interviewed officials from the CBP Office of Field Operations and the State Department Bureau of Consular Affairs to identify the types of actions taken against overstays by these agencies and the circumstances in which these actions occur. We analyzed data provided by CBP on POE inadmissibilities, and the State Department on visa refusals, in order to quantify the results of actions taken by each agency against overstays from fiscal year 2005 through fiscal year 2010.⁶ We assessed the reliability of the data provided by CBP and the State Department by interviewing agency officials who are familiar with the data systems and the processes used to collect, record, and analyze the data. We determined that the data were sufficiently reliable for the purposes of our report.

To determine the extent to which DHS identifies overstays and shares overstay information among its components and with federal, state, and local agencies, we analyzed the processes DHS uses to (1) evaluate suspected overstay records, (2) collect nonimmigrant arrival and

⁴We analyzed the results of CTCEU overstay investigations starting in fiscal year 2004 because it is the first year for which complete data are available.

⁵We obtained data on ICE's overstay investigative work hours from fiscal years 2006 through 2010 in order to focus our analysis on a 5-year period.

⁶We analyzed CBP and State Department data from fiscal years 2005 through 2010 because fiscal year 2005 is the first year for which complete CBP data are available.

departure information, and (3) share information on overstays among its component entities and with other federal, state, and local agencies.⁷ As part of our effort to evaluate these processes, we compared the processes established by DHS to criteria in *Standards for Internal Control in the Federal Government*.⁸ Furthermore, we reviewed US-VISIT and CTCEU program documentation—such as standard operating procedures and guidelines for evaluating overstay records—and analyzed data on the number of overstays identified and overstay leads processed by US-VISIT from fiscal years 2005 through 2010 and by CTCEU from fiscal years 2004 through 2010.⁹ We assessed the reliability of the data provided by US-VISIT and CTCEU by reviewing documentation on the data systems' controls and specifications, and interviewing US-VISIT and CTCEU officials who are familiar with the data systems. We determined that the data were sufficiently reliable for the purposes of our report.

Further, we interviewed officials from US-VISIT, CTCEU, and the DHS Office of Immigration Statistics about the processes and systems used to analyze nonimmigrant arrival and departure information and other immigration records for the purpose of identifying overstays. We also interviewed officials at CBP Office of Field Operations headquarters and conducted site visits to three land POEs (located in Blaine, Washington; San Ysidro, California; and Otay Mesa, California), four sea POEs (located in Seattle, Washington; Los Angeles/Long Beach, California; Miami, Florida; and Newark, New Jersey/New York, New York), and five air POEs (located in Seattle, Washington; Los Angeles, California; Miami, Florida; Newark, New Jersey; and New York, New York) in order to observe, and obtain officials' views on, the processes and systems used by CBP to inspect passengers and collect nonimmigrant arrival and departure information. We selected these locations based on (1) the presence of multiple types of POEs (land, sea, or air) in close proximity to each other; (2) the locations being geographically dispersed to include POEs on the eastern and western coasts, as well as on the northern and southern land borders; and (3) the locations being in close proximity to ICE Homeland

⁷During the course of our review we determined that state and local law enforcement actions against overstays were limited and consequently would not be a primary focus of this report.

⁸[GAO/AIMD-00-21.3.1](#).

⁹We analyzed these data from US-VISIT starting in fiscal year 2005 and from CTCEU starting in fiscal year 2004 because those are the first years for which US-VISIT and CTCEU have complete data.

Security Investigations field offices we visited. Additionally, to assess DHS's efforts to share overstay information, we reviewed program documentation from US-VISIT, ICE, and USCIS about applicable information sharing activities and interviewed officials from different agencies involved in sharing or receiving overstay information about the results of these activities. In particular, we interviewed officials from US-VISIT, ICE, and USCIS to obtain the perspective of agencies responsible for sharing overstay-related information. Likewise, we also interviewed State Department officials from the Bureau of Consular Affairs and CBP officials from the Office of Field Operations headquarters and at the POEs we visited to obtain the view of agencies responsible for using the shared information to take enforcement action against out-of-country overstays. Although we cannot generalize the information obtained during the site visits to the experience of CBP officials at all POEs, these visits provided us with valuable perspectives on the mechanisms DHS uses to share information about overstays and the processes CBP uses to inspect travelers and collect nonimmigrant information at POEs.

We conducted this performance audit from February 2010 through April 2011, in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Department of Homeland Security Identification of Overstays

The United States Visitor and Immigrant Status Indicator Technology Program (US-VISIT) is the primary Department of Homeland Security (DHS) entity responsible for identifying visa and Visa Waiver Program (VWP) nonimmigrant overstays.¹ As of November 2010, US-VISIT had 42 government positions and 76 contractor positions responsible for identifying nonimmigrant overstays based on nonimmigrants' arrival and departure information collected by DHS's U.S. Customs and Border Protection (CBP) at ports of entry (POE) and contained in the Arrival and Departure Information System database, a repository of biometric and biographic information maintained by US-VISIT. Using this database, US-VISIT identifies both in-country and out-of-country overstays.

US-VISIT Identification of In-Country Overstays

To identify in-country overstays, US-VISIT first uses the Arrival and Departure Information System to generate an automated report that identifies nonimmigrants whose period of authorized admission has elapsed but for whom there is no departure record in the Arrival and Departure Information System. US-VISIT conducts automated and manual searches of 13 databases for information indicating that any of the remaining suspected overstays have left the country, have been granted an adjustment of status, or have a legitimate reason for staying longer than their authorized periods of admission (e.g., if the person has been granted asylum status). All suspected overstay leads that do not have records indicating that the suspected overstays have left the country or that indicate that they otherwise may remain in the country due to, for example, a change in status, are sent to the ICE Counterterrorism and Criminal Exploitation Unit (CTCEU) for further verification. US-VISIT cannot conclusively confirm that the leads it provides to ICE are overstays because some information in the various databases it searches may be incorrect, out-of-date, or missing. To positively identify overstays, ICE must conduct further review and investigations.

As shown in table 5, from fiscal years 2005 through 2010, US-VISIT analyzed over 5 million leads and sent over 79,000 leads to CTCEU for further review.

¹US-VISIT is also the primary source for developing overstay rate information for countries, including those participating in the VWP. However, the Office of Immigration Statistics within DHS is responsible for releasing this information.

Table 5: Number of Records Processed and Identified as Potential Overstays from Fiscal Years 2005-2010

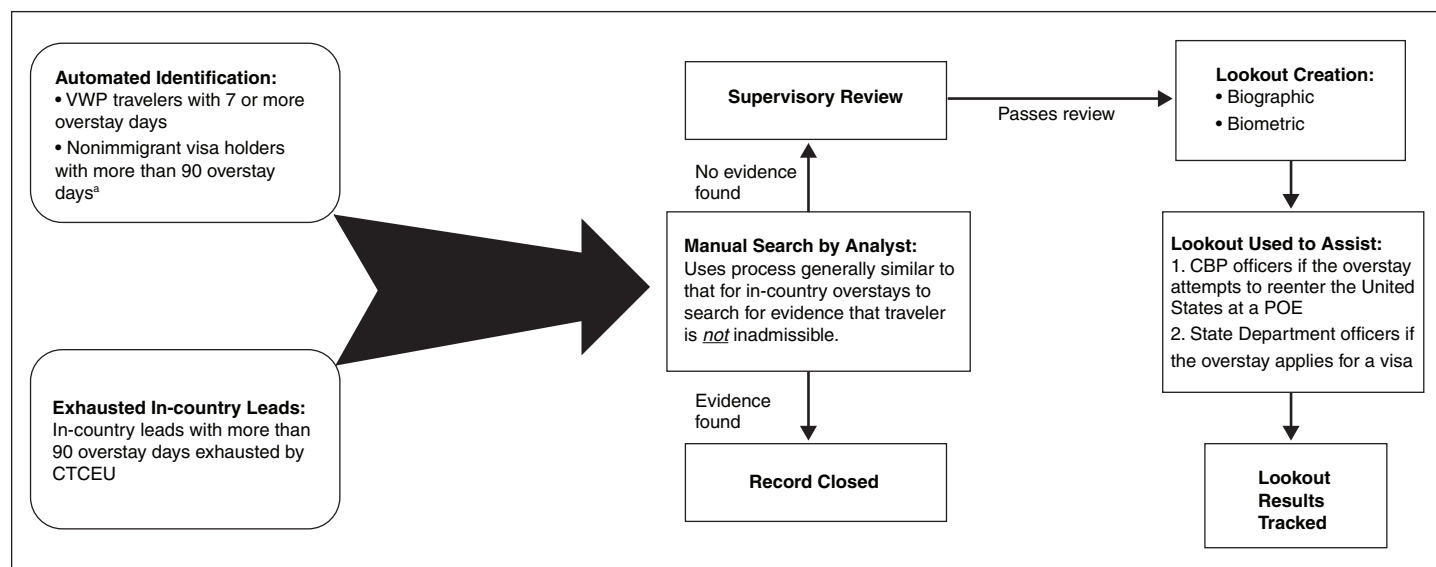
Fiscal year	Number of records processed (rounded to the nearest 100)	Number of records identified as potential overstays and sent to CTCEU (rounded to the nearest 100)
2005	67,600	1,400
2006	649,500	4,200
2007	733,300	12,900
2008	2,054,300	14,200
2009	620,900	16,400
2010	1,236,400	30,400
Total	5,362,000	79,500

Source: US-VISIT information from the TRAC database.

US-VISIT Identification of Out-of-Country Overstays

To identify out-of-country overstays, US-VISIT conducts manual and automated analyses similar to the processes for identifying in-country overstays, as shown in figure 8.

Figure 8: US-VISIT Process for Identifying Out-of-Country Overstays



Source: GAO analysis of US-VISIT standard operating procedure manual.

^aNonimmigrant visa holders include those traveling on visas for business, pleasure, or medical treatment.

Generally, the Arrival and Departure Information System identifies potential out-of-country overstays and then US-VISIT analysts verify the status of the suspected overstays through checking information in various databases. If through this verification process an analyst determines that a suspected overstay's actual departure date exceeds his or her authorized departure date by more than 90 days for nonimmigrant visa holders or by 7 or more days for nonimmigrants traveling under the VWP, the analyst creates an electronic lookout on the nonimmigrant's record to notify federal officials that he or she previously overstayed.² CBP officers use the lookout to help determine whether the nonimmigrant is eligible for readmission to the United States, and State Department consular officials use this information to help determine whether the nonimmigrant is eligible for a future visa. From fiscal years 2005 through 2010, US-VISIT created lookouts for about 53,000 suspected of-out-country overstays.

CTCEU Identification of In-Country Overstay Leads

CTCEU is responsible for identifying and validating overstay leads to be investigated by the ICE Homeland Security Investigations field offices. At the beginning of fiscal year 2011, CTCEU had 50 contract analyst and 17 government, including supervisory, positions dedicated to identifying leads. CTCEU conducts analysis subsequent to that performed by US-VISIT to identify additional in-country overstays and verify overstay leads provided US-VISIT. Specifically, CTCEU analyzes (1) in-country visa overstay leads provided by US-VISIT, (2) in-country VWP overstay leads provided by US-VISIT, (3) out-of-status students identified in the Student and Exchange Visitor Information System, and (4) overstay leads based on data collected from the National Security Entry-Exit Registration System. CTCEU analysts compare records from these four sources against records in other databases that contain information on, for example, nonimmigrants' applications to change status, to determine whether nonimmigrants have overstayed and are likely still present in the United States. Specifically, CTCEU runs 28 different queries in 15 databases to identify information pertaining to leads. These databases include the same ones that US-VISIT reviews to identify any newly updated information as well as additional databases. During this process, CTCEU removes records of nonimmigrants that have either left the country or changed their status, identifies nonpriority leads for processing by ICE Enforcement and Removal Operations, and sends leads that do not have a viable address to

²US-VISIT does not process records for nonimmigrant visa holders who are suspected of overstaying by less than 90 days.

contractors to continually monitor for new address information. CTCEU assigns overstay leads deemed to be valid and of high priority to ICE field office agents within their geographical area of responsibility for mandatory investigation.

From fiscal years 2004 through 2010, CTCEU processed over 1,373,000 leads and sent over 38,000 leads to field offices for investigation. Table 6 provides information related to the overstay leads that CTCEU has processed from fiscal years 2004 through 2010.

Table 6: CTCEU Processing of In-Country Overstay Leads from Fiscal Years 2004-2010

Status of leads	2004	2005	2006	2007	2008	2009	2010	Total
Leads imported	261,600	198,600	168,500	197,300	155,600	198,300	193,300	1,373,200
Closed leads	239,500	180,900	148,200	166,400	104,600	101,100	103,900	1,044,600
Nonpriority leads sent to Enforcement and Removal Operations	13,900	13,000	15,800	25,100	46,000	85,600	79,700	279,100
Viable leads assigned to field offices for investigation	7,600	4,600	4,300	5,700	5,000	6,100	5,400	38,700
Nonviable leads sent to contractor for continual monitoring	700	300	300	200	100	6,000	4,900	12,500

Source: CTCEU LeadTrac data on overstay leads.

Appendix III: Comments from the Department of Homeland Security

U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

April 11, 2011

Richard N. Stana
Director, Homeland Security and Justice
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Re: Comments to Draft Report, GAO-11-411, "OVERSTAY ENFORCEMENT:
Additional Mechanisms for Collecting, Assessing, and Sharing Data Could
Strengthen DHS's Efforts but Would Have Costs"

Dear Mr. Stana:

The Department of Homeland Security (DHS) Components with the greatest responsibility for overstay enforcement are U.S. Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP), and National Protection and Programs Directorate (NPPD). DHS appreciates the opportunity to review and provide comments to the recommendations in your report on overstay enforcement. It is important to note that this report focuses on both in the identification and enforcement of visa overstays. The report classifies overstays for non-immigrants who exceed their term of admission (such as a visitor) and those who violate their status (such as a student). This report is comprehensive and provides a good working knowledge about the non-immigrant visa process. ICE, CPB, and NPPD will work individually and collectively to resolve the issues identified in the report.

The purpose of this audit was to determine the extent to which DHS takes action to address overstays and shares overstay information among the Components responsible for border security and immigration enforcement. In the absence of a biometric entry and exit system, DHS uses various methods to identify overstays, primarily biographic data and share overstay information.

The report illustrates how DHS actions to address enforcement of the estimated overstay population could be enhanced by improved planning and information sharing. We have addressed each recommendation separately below.

To help ICE's execution of overstay enforcement efforts and improve assessment of ICE programs that identify and address overstays and allow program adjustments, if necessary, the U.S. Government Accountability Office (GAO) recommended that the Assistant Secretary for Immigration and Customs Enforcement take the following three actions:

Recommendation 1: “Establish a target timeframe for assessing the funding and resources ERO would require in order to assume responsibility for civil overstay enforcement and use the results of that assessment.”

Response: DHS concurs. In June 2010, ICE Director Morton announced his intention to transition noncriminal overstays from the Counter Terrorism and Criminal Exploitation Unit (CTCEU), which is part of Homeland Security Investigations (HSI), to ERO. HSI and ERO are in the process of planning for this transition. As part of the Fiscal Year 2013 Resource Allocation Plan, ICE will identify the resources needed to execute this transition.

Recommendation 2: “Develop outcome-based performance measures—or proxy measures if program outcomes cannot be captured—and associated targets on CTCEU’s progress in preventing terrorists and other criminals from exploiting the nation’s immigration system.”

Response: DHS concurs. Due to the nature of “pro-active” investigations, a performance measure is not currently available to capture the success of the CTCEU’s ability to discourage or prevent terrorist activity in the United States. As previously stated, CTCEU’s approach to preventing the exploitation of the immigration system is one that mirrors the precept of the legal system in that compliance to the law is based on deterrence through example. In addition, the CTCEU prevents exploitation by enacting revisions to immigration policy and U.S. Law intended to counter identified vulnerabilities. In the meantime, ICE will consult with our national security partners to determine if proxy measures can be implemented to satisfy this recommendation.

Recommendation 3: “Develop a performance measure for assessing quality of leads CTCEU assigns to ICE field offices for investigations, using performance information already collected by CTCEU.”

Response: DHS concurs. Since November 2007, CTCEU has conducted quality reviews by sampling 1% of daily leads to correct deficient information in the leads it sends to the field and to determine if additional training is needed to correct repetitive errors. ICE believes that this has contributed to the increase in field arrests since its implementation. The report referenced this; however, it also suggested that this metric is not sufficient to assess the quality of overstay leads. The CTCEU disagrees with this assertion and contends that quality control reviews ensure that the field agents have the most reliable information available at that time to begin an investigation. One of the challenges to developing such a performance measure is the fact that CTCEU relies on other Components’ information to formulate leads. As that information becomes more reliable and accurate, so will the effectiveness of CTCEU leads. This report accurately stated 77% of CTCEU leads resulted in a finding of “departure,” “in-status,” or “all leads exhausted.” Information correlating to these findings is derived from DHS databases referencing alien departure records, alien application filings, and alien self-reported addresses, which are frequently inaccurate and unreliable.

The report correctly stated that a direct correlation could not be attributed to enforcement actions by conducting quality reviews. The success or outcome of a lead generated by the CTCEU has many factors that cannot be accounted for by this program, such as the overstay moving without

notification, dependence on other agencies to update their computer systems, and deficiencies in collected information.

Recommendation 4: “To increase the completeness of exit information available for the purpose of identifying overstays, we recommend that the Commissioner of Customs and Border Protection analyze the costs and benefits of developing a standard mechanism for collecting I-84/I-94W forms at land POEs, and develop a standard mechanism to collect these forms, to the extent that benefits outweigh the costs.”

Response: DHS concurs. A standardized mechanism to collect I-94 and I-94W departure information at the land border would be beneficial. CBP would like to propose a cost-effective independent evaluation be considered as responsive to this recommendation for identifying the benefits and risks with associated costs to a standardized land border mechanism for the collection of the paper I-94 given the ever-changing land border environment.

Given the different operating environments on the land border, certain factors that would challenge the efficient collection of this information include multiple entries (commuters), different nonimmigrant classifications (students), and the unforeseen results of future initiatives (automated I-94). Therefore, it may be premature at this time to develop such a standard mechanism for a paper process.

Operating environments differ greatly from our southern border ports to the northern border ports. Standardizing an efficient mechanism for northern border ports may not be an efficient mechanism for southern border ports, and vice versa. Infrastructure constraints, the lack of any outbound inspection capability, and limited resources are also significant challenges that impact developing such a mechanism.

CBP works closely with Canada on preliminary efforts to share certain border-crossing data electronically. This effort could have great potential in enhancing the CBP I-94 information collection, although it is too early to know its true value with respect to the collection of I-94 data. Canada currently assists us with the collection of paper I-94s upon departure, which is a great benefit that we do not have at our southern border ports.

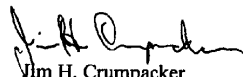
Another factor that influences the development of such a standardized mechanism is an initiative to automate the I-94, eliminating the paper form, which will have a significant impact on exit control and the collection of I-94 data. With this project in its early stages, it is difficult to foresee how this may be best integrated into such a mechanism.

Recommendation 5: “To improve information sharing in support of efforts to identify and take enforcement action against overstays, we recommend that the Secretary of Homeland Security direct the Commissioner of Customs and Border Protection, the Undersecretary of the National Protection and Programs Directorate, and the Assistant Secretary of Immigration and Customs Enforcement to assess the costs and benefits of creating biometric and biographic lookouts for (1) out-of-country overstays of 90 days or less who entered the country using nonimmigrant business and pleasure visas, and (2) in-country overstay leads sent to ERO, and create these lookouts, to the extent that the benefits of doing so outweigh the costs.”

Response: DHS concurs. ICE, CBP, and NPPD will work together to assess the costs and benefits of creating biometric and biographic lookouts for these categories of overstay. This will involve a determination of the planning and system development and implementation costs as compared to the benefit (value-added) these costs may generate. CBP does not anticipate any cost associated with the analysis and creation of these lookouts as this function is currently performed by NPPD and ICE. Lookout creation on overstays of less than 90 days would assist CBP in identifying those that may have violated their terms of prior admission. These lookouts could also be used for analysis in determining whether an individual requires additional screening, including whether an alien's visa is void pursuant to INA 222(g). The results of this assessment will be used to determine the feasibility of additional program costs.

DHS concurs with the five GAO recommendations. DHS is taking the necessary actions to address each recommendation. Thank you for the opportunity to comment on this Draft Report. We look forward to working with you on future Homeland Security issues.

Sincerely,



Jim H. Crumacker
Director
Departmental GAO/OIG Liaison Office

Appendix IV: GAO Contact and Staff Acknowledgments

GAO Contact

Richard M. Stana, (202) 512-8777 or stanar@gao.gov

Staff Acknowledgments

In addition to the contact named above, Rebecca Gambler, Assistant Director, and Taylor Matheson, analyst-in-charge, managed this assignment. Jeremy Manion, Zane Seals, and Joshua Wiener made significant contributions to this work. Amanda Miller assisted with design and methodology, and Frances Cook provided legal support. Jessica Orr, Robert Robinson, Debra Sebastian, Sylvia Bascope, Richard Eiserman, Frederick Lyles, Katherine Trenholme, and Yee Wong assisted with report preparation.

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